To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]
From: Beck, Nancy
Sent: Thur 6/22/2017 1:31:38 AM
Subject: Miracles do happen!
RiskDRAFT.pdf
ATT00001.htm
Prioritization Rule DRAFT.pdf
ATT00002.htm

OMB just concluded review on the rules and the guidance! We have accomplished this Herculean task and I could not be more impressed with staff who made this happen this evening. Everything will be ready for signature in the morning.
Liz- attached are pdf's of the risk and prioritization rules-- draft, unsigned and embargoed. After signature tomorrow we can replace them with signed finals.

Please let me know if you need anything else. Lets hope my blood pressure returns to normal sometime soon!

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
Personal Phone / Ex. 6
Beck.Nancy@epa.gov

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: McGartland, Al
Sent: Fri 5/19/2017 10:14:56 AM
Subject: Re: CPP

For that discussion today:

Deliberative Process / Ex. 5

Sent from my iPhone

On May 18, 2017, at 9:41 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Let's address these first thing tomorrow morning. I did give some direction **Deliberative Process / Ex. 5** but let's talk. Thank you for this, Sarah.
>
> Sent from my iPad
>
> On May 18, 2017, at 6:58 PM, Dunham, Sarah <Dunham.Sarah@epa.gov> wrote:
>
> Hi Samantha-

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again for the further direction, as well as all the assistance from NCEE.

The one additional point I want to make sure everyone is accounting for is that we will

Deliberative Process / Ex. 5

Thanks,

Sarah

On May 17, 2017, at 12:40 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Sarah,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you for your help with this and please be in touch if you have questions.

Best,
Samantha

To: Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Fotouhi, David[fotouhi.david@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; David.F.Dale@usace.army.mil[David.F.Dale@usace.army.mil]; Cooper, David R SES USARMY CEHQ (US)[David.R.Cooper@usace.army.mil]; Craig R SES (US) Schmauder[craig.r.schmauder.civ@mail.mil]; Cindy Barger[cindy.s.barger.civ@mail.mil]; Vail, Timothy R LTC USARMY HQDA ASA CW (US)[timothy.r.vail.mil@mail.mil]; Moyer, Jennifer A CIV USARMY CEHQ (US)[Jennifer.A.Moyer@usace.army.mil]; Jensen, Stacey M CIV USARMY HQDA (US)[Stacey.M.Jensen@usace.army.mil]
From: Eisenberg, Mindy
Sent: Tue 4/25/2017 10:35:53 PM
Subject: materials for Wednesday 10:00 waters meeting
WOTUS-2 Step 1 Preamble 4-25-2017.docx
draft WOTUS2 tribal info and consultation.pptx
tribal info-consultation webinars DRAFT run of show.docx

All,
Please find attached the latest version of the draft step 1 preamble, the draft tribal consultation slides [please review slide 12] and draft script for Thursday's tribal webinar. We have incorporated edits to date from Army, Corps, OGC, and Sarah. There are a few items flagged with comment bubbles that we would like to discuss tomorrow at our meeting.

Thanks,
Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Jackson, Ryan[jackson.ryan@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Graham, Amy[graham.amy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Grantham, Nancy[Grantham.Nancy@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Hull, George[Hull.George@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Owens, Nicole[Owens.Nicole@epa.gov]; Hilosky, Nick[Hilosky.Nick@epa.gov]; Hostage, Barbara[Hostage.Barbara@epa.gov]; Cogliano, Gerain[Cogliano.Gerain@epa.gov]; Brooks, Becky[Brooks.Becky@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]
From: Fonseca, Silvina
Sent: Fri 6/9/2017 5:31:11 PM
Subject: Signed Final Rule - Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act - Delay of Effective Date
OLEM-17-000-9894.pdf

Good afternoon,

The Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act Final Rule, delay of effective date, was signed today. The rule delays the effective date of the RMP for an additional 20 months to allow the agency to conduct a reconsideration proceeding and to consider other issues that may benefit from additional comment. The new effective date of the rule is February 19, 2019. Please let me know if you have any questions.

Silvina Fonseca
Special Assistant (OLEM, OARM, OHS, OSBP and OCR)
Office of the Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1955
Personal Phone / Ex. 6

To: 2017HQfirstassistants[2017HQfirstassistants@epa.gov]; 2017Regionfirstassistants[2017Regionfirstassistants@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Threet, Derek[Threet.Derek@epa.gov]; Burden, Susan[Burden.Susan@epa.gov]; Wagner, Kenneth[wagner.kenneth@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Allen, Reginald[Allen.Reginald@epa.gov]
From: Burden, Susan
Sent: Fri 6/23/2017 4:44:32 PM
Subject: Weekly Report - June 23, 2017
Weekly Report 23 June 2017.docx

Good afternoon,
Attached is the weekly report for June 23, 2017.
Thanks,
Susan

Susan Burden, Ph.D.
Special Assistant (ORD, OCSPP, OCHP, SAB)
Office of the Administrator
U.S. Environmental Protection Agency
Office: (202) 564-6308
Cell: Personal Phone / Ex. 6

Organizer: Rodrick, Christian[rodrick.christian@epa.gov]
From: Rodrick, Christian
Location: 2154 Rayburn House Office Building
Importance: Normal
Subject: HEARING: Regulatory Reform Task Force Check In -- HOGR
Start Time: Wed 11/29/2017 3:00:00 PM
End Time: Wed 11/29/2017 5:00:00 PM
Required Attendees: Ringel, Aaron; Lyons, Troy; Bolen, Brittany; Lovell, Will (William)
Pruitt-EPA Invite Reg. Reform Hrg. 11-29-17.pdf

TREY GOWDY, SOUTH CAROLINA
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
MAJORITY (202) 225–5074
MINORITY (202) 225–5051
http://oversight.house.gov

November 15, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Pruitt:

The Subcommittee on the Interior, Energy and Environment and the Subcommittee on Intergovernmental Affairs of the Committee on Oversight and Government Reform requests testimony from you, or your designee, at a hearing titled, "Regulatory Reform Task Forces Check-In: Part III" on Wednesday, November 29, 2017, at 10:00 a.m. in room 2154 of the Rayburn House Office Building.

The hearing will focus on agency implementation of the President's Executive Order 13771 "Reducing Regulation and Controlling Regulatory Costs," and Executive Order 13777 "Enforcing the Regulatory Reform Agenda." The hearing will evaluate the Agency's efforts to implement these policies and establish a Regulatory Reform Task Force to reduce unnecessary, costly, duplicative, and burdensome regulations.

Please be prepared to provide a five-minute opening statement and answer questions posed by Members. The enclosed Witness Instruction Sheet provides information, but please note we request written testimony at least two business days prior to the hearing. Please confirm attendance with Committee staff by November 15, 2017. If you have questions, please contact Ryan Hambleton of the majority staff at (202) 225-5074.

Sincerely,

Blake Farenthold
Chairman
Subcommittee on the Interior, Energy, and Environment

Gary Palmer
Chairman
Subcommittee on Intergovernmental Affairs

cc: The Honorable Stacey E. Plaskett, Ranking Minority Member
The Honorable Val Butler Demings, Ranking Minority Member

Enclosures

Witness Instruction Sheet
Governmental Witnesses

1. Witnesses should provide their testimony via e-mail to Kiley Bidelman, Clerk, Kiley.Bidelman@mail.house.gov, no later than 10:00 a.m. two business days prior to the hearing.

2. Witnesses should also provide a short biographical summary and include it with the electronic copy of testimony provided to the Clerk.

3. At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions. Written testimony will be entered into the hearing record and may extend to any reasonable length.

4. Written testimony will be made publicly available and will be posted on the Committee's website.

5. The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.

6. Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.

7. Please note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena, or testimony, promptly submit the attached notice of appearance to the Committee.

8. Committee Rules governing this hearing are online at www.oversight.house.gov.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5074.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
115TH CONGRESS

NOTICE OF APPEARANCE OF COUNSEL

Counsel submitting: _____

Bar number: _____ **State/District of admission:** _____

Attorney for: _____

Address: _____

Telephone: (_____ **)** _____ **-** _____

Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for _____ **in (select one):**

- (●) **All matters before the Committee**
- ( ) **The following matters (describe the scope of representation):**

_____

_____

All further notice and copies of papers and other material relevant to this action should be directed to and served upon:

Attorney's name: _____

Attorney's email address: _____

Firm name (where applicable): _____

Complete Mailing Address: _____

_____

I agree to notify the Committee within 1 business day of any change in representation.

_____ _____

Signature of Attorney **Date**

Organizer: Bolen, Brittany[bolen.brittany@epa.gov]
From: Inge, Carolyn
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Rubber Manufacturers Association (RMA)
Start Time: Tue 6/13/2017 3:00:00 PM
End Time: Tue 6/13/2017 3:30:00 PM
Required Attendees: mhenry@alpinegroup.com; Lovell, WilliamRees, Sarah
Optional Attendees: Kime, Robin; Inge, Carolyn; Jesse Levine; Sarah Amick; Tracey J. Norberg
Comments by the Rubber Manufacturers Association to Docket ID No. EPA-HQ....pdf

Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station**. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:
Tracey Norberg (Senior Vice President & General Counsel; US Tire Manufacturers Association)
Jesse Levine (Manager, Regulatory Affairs; TMA)
Sarah Amick (Vice President EHS&S and Senior Counsel; TMA)Courtney Titus Brooks (Director, Government Relations; TMA)
Mike Henry (Alpine Group)
Request: Any chance you have time in the next week or so to meet with me and a client, the Rubber Manufacturers Association (RMA). We would like to come in and discuss issues in your purview relative to the domestic tire manufacturers - including the nanomaterial reporting rule, residual risk and technology review, Phase 2 rule, biomass and TSCA implementation. Following are some bullets from a letter they transmitted in May, just to give you some color of what's currently on their radar.

- RMA encourages EPA to meet the court deadline (2018 or 2020) for completing the RTR review of the Tire MACT

- RMA members are committed to effective implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA).

- RMA recommends that EPA stay the effective date of the nanomaterial reporting rule until guidance is issued to clarify reporting obligations in the rule.

- RMA encourages EPA to accept RMA's petition for reconsideration of the Phase 2 rule and issue technical corrections to address the issues raised.

- RMA recommends that EPA designate biomass as carbon neutral and remove the burden of ASTM testing to determine the biogenic fraction of tire-derived fuel (TDF).

RUBBER
manufacturers
association

1400 K Street, NW • Washington, DC 20005 • tel (202) 682-4800 • fax (202) 682-4854 • www.rma.org

May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
Attention Docket ID No. EPA-HQ-OA-2017-0190
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Evaluation of Existing Regulations (April 13, 2017)

I. Introduction

The Rubber Manufacturers Association (RMA) is the national trade association representing major tire manufacturers that produce tires in the United States, including Bridgestone Americas, Inc., Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Kumho Tire Co., Inc.; Michelin North America, Inc.; Pirelli Tire North America; Sumitomo Rubber Industries, Ltd.; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA supports the goal of Executive Orders 13771 and 13777 to reduce regulatory burdens by implementing and enforcing regulatory reform to repeal, replace, or modify rules that are outdated, unnecessary, or ineffective. We appreciate the opportunity to contribute to this process by providing comments on EPA's Evaluation of Existing Regulations (April 13, 2017). As the EPA advances its regulatory reform priorities, RMA encourages the agency to adopt the recommendations provided in RMA's comments.

II. Background

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," which requires that for every new regulation issued, two be identified for elimination, unless prohibited by law. The executive order also provides each agency with a regulatory budget of $0 for fiscal year 2017, meaning that for any new regulation that imposes costs on the public, the agency must identify cost savings elsewhere, unless prohibited by law.

On February 24, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda," which directs each federal agency to select a regulatory reform officer and task force to evaluate existing regulations and to make recommendations to the agency head regarding which rules to prioritize for repeal, replacement, or modification. The Executive Order also directs the task forces to base their recommendations on input received from those affected by federal regulations including states, businesses, NGOs, and trade associations.

On March 24, EPA Administrator Scott Pruitt issued a memorandum outlining EPA's steps to comply with E.O. 13777. The memorandum identified members of EPA's regulatory reform task force and directed EPA's various offices to provide recommendations to the Administrator this month. On April 11, EPA opened Docket ID No. EPA-HQ-OA-2017-0190 to receive comments on regulatory reform

from the public. Comments submitted to this docket will be compiled and cited in memoranda from the task force to the Administrator recommending how to implement E.O. 13777.

III. RMA encourages EPA to meet residual risk and technology review (RTR) deadlines outlined in the Blue Ridge case

As Administrator Pruitt works to refocus EPA on its traditional mission of implementing the nation's environmental laws, RMA would like to be a resource for the agency. For example, with court orders in Blue Ridge v. Pruitt and California Communities Against Toxics v. Pruitt, the agency has over 30 RTRs to complete by 2020. To support the agency in meeting the court deadline for review of the rubber tire manufacturing National Emission Standards for Hazardous Air Pollutants (NESHAP), RMA is committed to continuing its collaborative work with the agency to provide information about the industry that will assist the agency in completing the RTR review.

For the past year, RMA has been working to educate the agency about tire manufacturing and how air emissions from tire manufacturing are calculated. RMA members voluntarily agreed to provide emissions data to the agency in lieu of EPA sending a section 114 request for the information. We plan to continue to assist the agency so it can complete the rubber tire manufacturing RTR by the 2018 and 2020 deadlines outlined in the Blue Ridge case.

IV. RMA members are committed to effective implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA)

RMA supported the bipartisan effort to revise and update the Toxic Substances Control Act (TSCA). As EPA works to implement the LCSA, it is important that the agency has sufficient time to develop the key framework rules, which establish the process the agency will follow going forward. RMA commented and recommended solutions to address issues with the inventory reset rule, the prioritization rule, the risk evaluation rule, and the first risk management rule issued under the LCSA (see attached comments as appendices).

The LCSA establishes that the TSCA program be funded through a combination of congressional appropriations and new industry fees up to $25 million per year. Additionally, the law requires TSCA to be funded by Congress at levels no lower than those from 2014 ($56 million annually). Both the congressional appropriations and industry fees are critical to the success of the LCSA implementation. We support a federal approach for risk evaluation and risk management of chemical substances that pose an unreasonable risk to avoid a patchwork of unworkable, varying state regulations.

V. RMA recommends that EPA stay the effective date of the nanomaterial reporting rule until guidance is issued to clarify reporting obligations in the rule

As noted *supra*, RMA supported the bipartisan effort to revise TSCA and enact the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA). The LCSA makes clear that EPA should not require reporting that is unnecessary or duplicative and, if reporting is needed, EPA should minimize compliance costs for reporting. LCSA Section 8(a). Unfortunately, the nanomaterial reporting rule does not appear to meet the statutory criteria of the LCSA. Additionally this rule is not required by the LCSA. Instead, this rule appears to create unnecessary reporting burdens and costs for industry without providing clarity on several issues, including what is considered a nanomaterial, whether mixtures or articles or research materials with nanomaterials are covered by the rule, and what health data should

be provided. Given that this rule is overly burdensome, unnecessary, and contrary to the requirements of LCSA section 8(a), RMA recommends that the agency stay the rule and provide guidance to clarify reporting obligations in the rule.

VI. RMA encourages EPA to accept RMA's petition for reconsideration of the Phase 2 rule and issue technical corrections to address the issues raised

On December 23rd, 2016, RMA filed a petition for reconsideration of EPA's Phase 2 Rule, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles (81 Fed. Reg. 73478, Oct. 25, 2016). As noted in the petition, RMA supports the goals of the Phase 2 rulemaking and appreciates the opportunity to partner with other stakeholders in contributing to better fuel economy and GHG emission reductions. RMA also appreciates several changes made to the final rule, addressing issues raised in RMA comments, such as the changes incorporating tire-pressure monitoring systems ("TPMS") into the greenhouse gas emission model ("GEM") and basing EPA's recall authority on the plain language of the Clean Air Act.

However, RMA believes that on several other issues such as lab alignment, standards for non-box and non-aero box trailers, SAE J1025 and J2452, and adjustable spread axle trailers, the agencies should reconsider their approach as these issues if left unaddressed could increase compliance burdens and costs. Since filing the petition, RMA has been working with EPA staff on finding solutions to the issues raised in the petition. In line with the goal of E.O. 13777 to identify solutions to regulatory provisions that may be ineffective, RMA recommends that EPA accept the RMA petition for reconsideration, continue working with the tire manufacturing industry, and propose technical fixes to the Phase 2 rule. For your reference, RMA has included its petition as an appendix to these comments.

VII. RMA recommends that EPA designate biomass as carbon neutral and remove the burden of ASTM testing to determine the biogenic fraction of tire-derived fuel (TDF)

In several EPA policies, including the Greenhouse Gas Reporting Rule, the Biomass Accounting Framework and the Clean Power Plan, EPA has determined that biomass, including the natural rubber fraction in tires, does not contribute net CO_2 to the atmosphere. Additionally, on May 5th, 2017, the President signed into law H.R. 244, an appropriations bill that directs EPA to deem biomass as renewable and carbon neutral as long as the energy production does not result in a loss of carbon sinks. Consistent with EPA's past policies and Congress' directive, RMA recommends that EPA determine that biomass, which includes the natural rubber fraction in tires, does not contribute net CO_2 to the atmosphere when combusted.

Additionally, RMA recommends that EPA reduce the burden of calculating the biogenic or natural rubber fraction in tire derived fuel (TDF). In the current greenhouse gas reporting rule, if municipal solid waste (MSW) or TDF makes up less than 10% of a unit's generated energy, then the user can calculate biogenic CO_2 emissions by multiplying the natural rubber average by the fuel mass, heat value and emission factor according to the section 98.33(e)(3)(iv) formula. But if MSW or TDF makes up more than 10% of a unit's generated energy, then costly and burdensome ASTM air emission tests are required to determine biogenic CO_2 emissions. These ASTM tests are unnecessary for TDF because RMA surveyed members for natural rubber percentages in passenger/light truck and truck/bus tires and then weighted those percentages by sales data for each company for the past ten years to calculate a consistent 24% natural rubber average for the total scrap tire stream.

Given that TDF has a consistent biogenic fraction, the section 98.33(e)(3)(iv) formula for calculating biogenic CO_2 emissions should not be limited to units in which TDF makes up less than 10% of a unit's generated energy. While ASTM test methods to identify biogenic material may make sense for MSW, a material with compositional variability, they do not for TDF. Therefore, RMA recommends that EPA propose to amend the greenhouse gas reporting rule to allow all TDF users to calculate biogenic CO_2 emissions based on the natural rubber average because regardless of the percentage of TDF used in a unit, the net result should be a 24% reduction in GHGs given that TDF has a consistent biogenic fraction.

VIII. Conclusion

RMA again thanks the EPA for its consideration of our response to the agency's request for comment: Evaluation of Existing Regulations (April 13, 2017). If you have any questions please contact Sarah Amick (samick@rma.org; 202-682-4836) or Jesse Levine (jlevine@rma.org; 202-682-4866).

Respectfully submitted,

Jesse E. Levine
Manager, Regulatory Affairs
Rubber Manufacturers Association

Organizer: Rodrick, Christian[rodrick.christian@epa.gov]
From: Rodrick, Christian
Location: O'Neil House Office Building (200 C St SW, Washington, DC 20515)
Importance: Normal
Subject: EPA Regulatory Reform Task Force Briefing for HOGR/HJC
Start Time: Tue 10/24/2017 7:00:00 PM
End Time: Tue 10/24/2017 7:55:00 PM
Required Attendees: Ringel, Aaron; Kime, Robin; Bolen, Brittany; Rees, Sarah; Lovell, Will (William)

2017-09-06 OGR JUD to Pruitt-EPA - Regulatory Task Force Briefing by 9-2....pdf

EPA to brief the House Oversight and Government Reform and House Judiciary Committees on EPA's Regulatory Reform Task Force.

Organizer:	Hengst, Benjamin[Hengst.Benjamin@epa.gov]
From:	Hengst, Benjamin
Location:	Call in below; in DC we will use 6520A
Importance:	Normal
Subject:	Call with OMB on glider repeal NPRM
Start Time:	Tue 11/7/2017 3:30:00 PM
End Time:	Tue 11/7/2017 4:30:00 PM
Required Attendees:	Harlow, David; Charmley, William; Moulis, Charles; Yanca, Catherine; Orlin, David; Kataoka, Mark; Bolen, Brittany; Baptist, Erik; Sutton, Tia; Gunasekara, Mandy; Dominguez, Alexander; Wolverton, Ann
Optional Attendees:	Dravis, Samantha; VanLare, Paula; Nagelhout, Peter; Sargeant, Kathryn; Parsons, Christy; McGartland, Al; Klemick, Heather; Srinivasan, Gautam

EO12866_Repeal of Emission Requirements for Gliders 2060-AT79 NPRM FRN_20171102.docx

EO 12866 Review - EPA Repeal of Emission Requirements for Glider Vehicles - NPRM - 10_24_2017.docx

Attaching the version of the glider document that contains the original comments from OMB (10/24 version)

EPA's passback document is the 11/2 version

Time is confirmed for 10:30 am Tuesday morning (11/7/17)

Dial-In: Personal Phone / Ex. 6 **Participant Code:** Personal Phone / Ex. 6

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Nickerson, William
Sent: Fri 10/12/2018 1:32:06 PM
Subject: landfills package FYI
EO 12866_Landfills Subpart Ba 2060-AU33 NPRM_20181011.docx

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Schwab, Justin[Schwab.Justin@epa.gov]
From: Woods, Clint
Sent: Thur 10/11/2018 10:14:14 AM
Subject: Fwd: Landfills Ba FRN
40 CFR Part 60_Subpart Cf amended.docx
ATT00001.htm
Adopting Subpart Ba Requirements for MSW Landfills EG.DOCX
ATT00002.htm

Brittany,

Heads up on landfills package - Will be coming your way this afternoon ahead of the expeditious interagency review. OGC is giving it one more look and Schwab is working his magic. Happy to discuss further but package is straightforward.

Begin forwarded message:

From: "Dunkins, Robin" <Dunkins.Robin@epa.gov>
Date: October 10, 2018 at 5:11:42 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>
Cc: "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Marks, Matthew" <Marks.Matthew@epa.gov>
Subject: Landfills Ba FRN

Clint/Justin,

As promised, here's the FRN package for adopting timelines for Subpart Ba for landfills. I've attached the Preamble language and the regulatory text. We need your comments no later than noon tomorrow so that we can get this package moving through the system and sent to OMB by Thursday afternoon. Let me or Kevin know if you have any questions.

Thanks,
robin

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code: E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335
dunkins.robin@epa.gov

To: Beck, Nancy[Beck.Nancy@epa.gov]; Bertrand, Charlotte[Bertrand.Charlotte@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Fri 10/5/2018 12:50:59 PM
Subject: OCSPP Reg Agenda Entries
OCSPP_2018-10-05.pdf
ATT00001.htm

Please find attached OCSPP's entries in the Fall 2018 reg agenda and plan.

-Will

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Rees, Sarah[rees.sarah@epa.gov]; Muellerleile, Caryn[Muellerleile.Caryn@epa.gov]
From: Curry, Bridgid
Sent: Thur 7/20/2017 1:35:21 PM
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

Hi Brittany,
Deliberative Process / Ex. 5 Otherwise everything in this one-pager is okay.
Thanks,
Bridgid

From: Bolen, Brittany
Sent: Wednesday, July 19, 2017 7:32 PM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

Thanks, Bridgid. I made some edits to the one-pager. Attached is what I sent over. Please let me know if anything has changed.

From: Curry, Bridgid
Sent: Wednesday, July 19, 2017 4:48 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: FW: Spring Reg Agenda Desk Statement, Q&As

Hi Brittany,
Sarah asked me forward this email to you.
Please let me know if you have any questions.
Bridgid

From: Curry, Bridgid
Sent: Monday, July 17, 2017 3:03 PM
To: Letendre, Daisy <letendre.daisy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

Hi Daisy,

Deliberative Process / Ex. 5

At

Please let us know if you have any additional questions.

Thanks,
Bridgid

From: Letendre, Daisy
Sent: Monday, July 17, 2017 10:22 AM
To: Germann, Sandy <Germann.Sandy@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>;

Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

I want to have everything on one page when it goes to OPA. Here's my final, what I am missing are final numbers and the description from OMB on inactive actions.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Germann, Sandy
Sent: Monday, July 17, 2017 10:18 AM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

Here's the latest version that reflects Daisy edits and the # changes from last week, so we can update this doc, if we have answers.

Sandy Germann
US EPA Office of Policy
Personal Phone / Ex. 6
germann.sandy@epa.gov

From: Curry, Bridgid
Sent: Monday, July 17, 2017 10:16 AM
To: Letendre, Daisy <letendre.daisy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

+ Caryn

From: Letendre, Daisy
Sent: Monday, July 17, 2017 10:08 AM
To: Germann, Sandy <Germann.Sandy@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

Sandy, I've combined my edits with the latest you sent – do we have a description from OMB on inactive actions? Also looking for the latest Numbers.

From: Germann, Sandy
Sent: Monday, July 17, 2017 10:07 AM
To: Kime, Robin <Kime.Robin@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>
Subject: RE: Spring Reg Agenda Desk Statement, Q&As

Hi, I worked w/ Caryn on this late last week, and sent a revised draft back to Daisy. But now realizing the latest I sent her may not have had the edits she sent us on 7/5. I'll doublecheck that, check back w/ Brigid and Caryn to see if we've had any other # changes, and send the latest version back to Daisy.

Sandy Germann
US EPA Office of Policy
Personal Phone / Ex. 6
germann.sandy@epa.gov

From: Kime, Robin
Sent: Monday, July 17, 2017 10:01 AM
To: Germann, Sandy <Germann.Sandy@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>
Subject: Spring Reg Agenda Desk Statement, Q&As

Good morning,
I hope you are well. Just looping back. The reg agenda is scheduled for release today so could we have a new set of material with the final numbers? When Daisy has them, she will share the material with OPA. Sound OK?

From: Letendre, Daisy
Sent: Wednesday, July 05, 2017 3:29 PM
To: Germann, Sandy <Germann.Sandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: For Review: Spring Reg Agenda Desk Statement, Q&As

Thanks Sandy – I made minor a few small edits to the desk statement, attached.

Sam and Brittany – let me know if this is something you also want to review before we send it over to OPA.

Sarah – it seems like we're still waiting on final numbers, namely what actions are regulatory vs. deregulatory. Is this info that we have to wait for OMB to get or do we have final numbers that we can plug-in to these docs?

From: Germann, Sandy
Sent: Wednesday, July 5, 2017 2:06 PM
To: Letendre, Daisy <letendre.daisy@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: For Review: Spring Reg Agenda Desk Statement, Q&As

Daisy,

We expect EPA's Spring Regulatory Agenda could be released by OMB at any time. We've prepared a desk statement and Q&As to help with any inquiries. Could you look over, and if you have no changes, check w/ Samantha and Brittany to see if they would like to review before we send to OPA? (They may prefer for Liz and her team to review first). Also, note the footnotes in these docs; as they reflect, some of the numbers are subject to change.

Thank you!
Sandy

Sandy Germann
US EPA Office of Policy
Personal Phone / Ex. 6
germann.sandy@epa.gov

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Lopez, George[lopez.george@epa.gov]
From: Lovell, William
Sent: Mon 6/26/2017 11:33:29 PM
Subject: 6/28 Presentation Prep Materials
C85_CCI June Attendees.pdf
C85_CCI June Meetings Agenda.pdf
Class of '85.v2.docx
Reg Reform Comment.pdf
Reg Reform Stakeholder Meetings_talking points_June 2017.docx

Please find attached the materials for tomorrow's meeting to **prep for Samantha's 6/28 Regulatory Reform Presentation to U.S. Electric Generating Companies**.

I placed these materials on top of your schedules.

Will Lovell
Policy Assistant, Office of Policy
U.S. Environmental Protection Agency
(202) 564-5713
Lovell.William@epa.gov

Class of '85/Cross-Cutting Issues Group Meetings

28 June 2017

NAME	COMPANY
AMOS, Jonathan	**Xcel Energy**
BAHTIC, Nedin	**Lakeland Electric**
BARRETT, Justin	**AES**
BARTON, Elvy	**Salt River Project**
BLOUNT, Will	**PowerSouth Electric Cooperative**
BURROWS, Byron	**Tampa Electric**
CASH, Rebecca	**LG&E and KU**
CASHIN, Mike	**Minnesota Power**
COLLIER, Angelique	**AES**
EATON, Kristin	**Florida Power &Light**
FLOYD, Susan Margaret	**Entergy**
FROSCH, Deborah	**Alliant**
GANNON, Maureen	**Public Service New Mexico**
GLESS, Jodie	**Florida Power &Light**
GRESS, Benjamin	**Great River Energy**
HAMPP, John	**Florida Power &Light**
HARDEN, Tim	**Alliant**
HILLESHEIM, David	**Xcel Energy**
HOCH, Joe	**Alliant**
HORN, Claudette	**Public Service New Mexico**
HUFF, Don	**Dairyland Power Cooperative**
JOHNSON, Rick	**Entergy**
KAUFER, lian	**Florida Power &Light**
KNOWLES, Berdell	**JEA**
LEAF, Patti	**Xcel Energy**

Class of '85/Cross-Cutting Issues Group Meetings

28 June 2017

NAME	COMPANY
LOIACANO, Jennifer	**Arkansas Electric Cooperatives**
MARTIN, Nick	**Xcel Energy**
McQUEEN, Kelly	**Entergy**
McQUOWN, Brian	**Oklahoma Gas &Electric**
MILLER, Cris	**Basin Electric Power Cooperative**
MONTALVO, Kara	**Salt River Project**
NELSON, Deb	**Great River Energy**
PAULSON, John	**Minnesota Power**
PLUTA, Michele	**Alliant**
REIMANN, Jon	**AES**
REVLETT, Gary	**LG&E and KU**
RIEHL, Carissa	**Great River Energy**
ROTH, Mary Jo	**Great River Energy**
ROSVOLD, Rick	**Xcel Energy**
SEHA, Ann	**Xcel Energy**
SHAMORY, Craig	**Talen Energy**
SHEA, Eric	**Florida Power &Light**
SMITH, Jennifer Thulien	**Xcel Energy**
SOLE, Michael	**NextEra Energy**
STEPHENS, Keith	**PowerSouth Electric Cooperative**
TOKARCZYK, Crystal	**Minnesota Power**
TREANOR, Elysia	**Portland General Electric**
TURNER, Usha	**Oklahoma Gas & Electric**
TUTTLE, Tomey	**Florida Power &Light**
WEGLARZ, Melissa	**Minnesota Power**
WILKUS, Dan	**Westar**

Class of '85/Cross-Cutting Issues Group Meetings

28 June 2017

BAKER BOTTS:

Berge, Megan
Bumpers, Bil
Jezouit, Debra
Mallick, Allison

CLASS OF '85 REGULATORY RESPONSE GROUP MEETING AGENDA

Great River Energy Office
12300 Elm Creek Blvd.,
Maple Grove, MN 55369

June 27, 2017 (9:15 a.m. – 3:15 p.m. Central)

Coffee and pastries (9:00 a.m. – 9:15 a.m.)

I. **Introduction & Update on Issues** (9:15 a.m. – 10:00 a.m.)
   - A. EPA Analysis of Air Regulation Impacts on Jobs
   - B. Challenge to the Congressional Review Act
   - C. "Sue and Settle" Developments
   - D. Treatment of Malfunctions in MACT Standards

II. **Opacity Litigation** (10:00 a.m. – 10:30 a.m.)
   - A. Citizen Suits: Alleged Opacity Violations
   - B. Opacity Monitoring Issues

Break (10:30 a.m. – 10:45 a.m.)

III. **Regulatory Reform Update (**10:45 a.m. – 11:30 a.m.)
   - A. OMB Guidance Documents
   - B. Two-for-One Executive Order
   - C. Summary of Comments on EPA Regulatory Reform
   - D. Status of EPA Regulatory Reform Task Force
   - E. Status of EPA's Reconsideration of Rules

IV. **Roundtable Discussion: Class of '85 Regulatory Reform Strategy** (11:30 a.m. – 12:15 p.m.)
   - A. RICE Issues
   - B. Monitoring Requirements
   - C. Modeling Issues
   - D. Other Issues

Lunch Break (12:15 p.m. – 1:15 p.m.)

V. **Guest Speaker Presentation on the New State-Federal Relationship** (1:15 p.m. – 2:15 p.m.)
   - A. David Thornton, Assistant Commissioner for Air Policy, Minnesota Pollution Control Agency

Break (2:15 p.m. – 2:30 p.m.)

VI. **Regional Haze** (2:30 p.m. – 3:15 p.m.)
   - A. Regional Haze FIP Challenges
   - B. Challenges to Regional Haze Revision Rule
   - C. CSAPR > BART
   - D. Preparing for the Second Planning Period

June 28, 2017 (9:00 a.m. -- 1:15 p.m. Central)

Coffee and pastries (8:45 a.m. – 9:00 a.m.)

I. **Climate Change Issues** (9:00 a.m. – 9:45 a.m.)

- A. Review and Replacement of the Clean Power Plan
- B. Public Trust Climate Litigation
- C. State Climate Initiatives

II. **NSR/Enforcement Issues** (9:45 a.m. – 10:30 a.m.)

- A. Status of Ongoing Enforcement Cases and Citizen Suits
- B. Lessons Learned From *Ameren*

Break (10:30 a.m. – 10:45 a.m.)

III. **NAAQS and Interstate Transport Issues** (10:45 a.m. – 11:15 a.m.)

- A. Section 126 Petitions
- B. Status of 2015 Ozone NAAQS
- C. Upcoming NAAQS Reviews

IV. **Class Action Tort Litigation** (11:15 a.m. – 11:45 a.m.)

- A. Trends in Class Action and Toxic Tort Litigation
- B. Best Practices for Avoidance and Defense

Break (11:45 a.m. – 12:15 p.m.)

V. **Working Lunch: Discussion With EPA Office of Policy About Regulatory Reform** (12:15 p.m. – 1:15 p.m.)
Joint with Cross-Cutting Issues Group

- A. Samantha Dravis, Associate Administrator, EPA Office of Policy
- B. Sarah Rees, Director, Office of Regulatory Policy and Management, EPA Office of Policy

CROSS-CUTTING ISSUES GROUP MEETING AGENDA

Great River Energy Office
12300 Elm Creek Blvd.,
Maple Grove, MN 55369

June 28, 2017 (12:15 p.m. - 4:30 p.m. Central)

I. Working Lunch: Discussion With EPA Office of Policy About Regulatory Reform (12:15 p.m. – 1:15 p.m.)
Joint with Class of '85 Regulatory Response Group

A. Samantha Dravis, Associate Administrator, EPA Office of Policy
B. Sarah Rees, Director, Office of Regulatory Policy and Management, EPA Office of Policy

Break (1:15 p.m. – 2:00 p.m.)

II. Update on Issues (2:00 p.m. – 2:15 p.m.)

A. PCB Rulemaking
B. Litigation Update
C. Pipeline Update

III. Status of Agency Regulatory Reform Efforts (2:15 p.m. – 2:45 p.m.)

A. Summary of Comments on EPA Regulatory Reform
B. Status of EPA's Reconsideration of Rules
C. Status of Department of Interior Regulatory Reform

IV. Water Reform: Developments and Strategy (2:45 p.m. – 3:30 p.m.)

A. Effluent Limitation Guidelines
B. WOTUS White Paper and Strategy for Agency Outreach
C. Client Roundtable: 316(b) / Cooling Water Intake Rule; Nutrient Reduction

V. Wildlife Reform: Strategy Discussion (3:30 p.m. – 4:00 p.m.)

A. Memorandum 37041 on MBTA Liability
B. 2016 Critical Habitat Regulations and Policy
C. FWS Mitigation Policies

VI. Coal Ash Developments (4:00 p.m. – 4:30 p.m.)

A. EPA Guidance on Coal Ash Permitting Programs
B. CWA Liability for Discharges to Groundwater

Overview of Comments of the Class of '85 Regulatory Response Group on Regulatory Reform

The Class of '85 Regulatory Response Group is a voluntary ad hoc coalition of approximately 30 electric generation companies from around the country that has been actively involved in the development of Clean Air Act rules and guidance affecting the electric generating industry for over 25 years.

The Class of '85 own and operate electric generating units (EGUs) subject to the CAA in approximately 35 states throughout the country.

Summary of Key Comments

A. EPA Should Streamline Recordkeeping and Reporting Requirements to Eliminate Duplicative Obligations

GHG Emissions Reporting

- **Summary of Issue:** There is an overlap in emissions reporting requirements under two part of the Code of Federal Regulations (Part 75 and Part 98). By streamlining the reporting process, the electric industry would reduce the reporting resources needed.
- EPA established Part 75 in 1993 to establish continuous emission monitoring and reporting requirements in support of EPA's Acid Rain Program. The program regulates EGUs that burn fossil fuels such as coal, oil and natural gas and have a generator capacity of greater than 25 megawatts. For these units, Part 75 requires continuous monitoring and reporting of sulfur dioxide (SO2) mass emissions, CO2 mass emissions, nitrogen oxides (NOx) emission rate, and heat input.
- Part 98, referred to as the Greenhouse Gas Reporting Program (GHGRP), is a mandatory rule for reporting greenhouse gases from sources that emit 25,000 metric tons or more of CO2e each year. Part 98.32 requires reporting of CO2, methane (CH4), and nitrous oxide (N2O) mass emissions from each stationary fuel combustion unit on an annual basis.
- Reporting under Parts 75 and 98 could be consolidated to reduce the reporting obligations for the electric sector by automatically populating specific CO2 emissions and heat input information entered in an EPA system under Acid Rain Program into the GHG reporting system.
- **EPA Response:** The agency does not appear to have publicly announced an effort to address this issue, but OAR, in its 5/15/17 memorandum responding to the Regulatory Reform Task Force, indicated a willingness to review this issue.

Maximum Achievable Control Technology (MACT) Reports

- **Summary of Issue:** The Class of '85 suggests the elimination of duplicative reporting requirements in general, and for the Boiler MACT in particular.
- They offer as an example that the Boiler MACT regulations in Part 63 require semi-annual compliance reports which are to include information on any deviations from an emission limit or operating limit. (40 CFR §63.7550(d)). The Title V regulations in Part 70 (state operating permits) contains a similar semi-annual compliance reporting requirement for deviations from permitting requirements. (40 CFR §70.6(3)(iii)).
- The Class of '85 suggests eliminating the requirement in Part 63 to the extent it duplicates requirements in Part 70.

- **EPA Response:** Your identification of a specific duplicative reporting requirement is very helpful and your suggested remedy appears to be quite sensible. To the extent that there are duplicative reporting requirements, it would make sense to roll them into the Title V permitting program.

Title V Permitting Program

- **Summary of Issue:** Title V of the CAA requires major sources and some non-major sources to obtain and operate in compliance with an operating permit that contains all applicable CAA requirements for the source.
- The Class of '85's comment on the Title V program pertains to the overlap between the reporting requirements in the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Industrial, Commercial, and Institutional and Process Heaters ("Boiler MACT") and Title V regulations. They urge EPA to streamline these regulations to reduce the regulatory burden on industry and the administrative burden on EPA.
- **EPA Response:** Your identification of duplicative reporting requirements is helpful. See also the discussion under Boiler MACT, above.

Part 64 Compliance Assurance Monitoring (CAM)

- **Summary of Issue:** The Compliance Assurance Monitoring (CAM) Rule was promulgated in 1997. CAM establishes procedures intended to provide a reasonable assurance of compliance with applicable CAA requirements for large emission units that rely on pollution control device equipment to achieve compliance.
- CAM requires monitoring be conducted to determine that control measures, once installed or otherwise employed, are properly operated and maintained so that they continue to achieve a level of control that complies with applicable requirements.
- The Class of '85 suggests that outdated Part 64 CAM provisions be eliminated. They offer as an example that electrostatic precipitator ("ESP") power monitoring under CAM has been rendered unnecessary by newer technologies and more recent regulations and should eliminated. They provide a citation to 40 CFR §64.3, but there appears to be no reference to ESPs in that section.
- **EPA Response:** EPA agrees that unnecessary and outdated regulations should be removed or revised. In the ESP example you gave, more detail would be helpful. Are ESPs explicitly or implicitly controlled by provisions in 40 CFR §64.3? What specific regulatory text changes would you suggest?

B. EPA Should Eliminate Monitoring and Testing Requirements That Provide No Environmental Benefits.

CEMS Certifications on Bypass Stacks

- **Summary of Issue:** The Class of '85 requested that EPA reduce the MATS requirement for CEMS certification on bypass stacks in cases where bypass stacks are rarely used.
- **EPA response:** My understanding is that the 2014 MATS reconsideration made an adjustment to how bypass stacks were addressed in the context of monitoring and testing requirements. Specifically, the final reconsideration provided options if it is not feasible to certify and QA the data from a CEMS. Units can route the exhaust from the bypass through the main stack (and

monitor bypass emissions, if any, that way) OR just use the CEMS on the main stack and count hours that the bypass stack is in use as hours of deviation from the monitoring requirements.
- Did these revisions address your concerns or do you have additional suggestions for CEMS certification on bypass stacks?

Tuning Requirements for New/Modified Units

- **Summary of Issue:** The Class of '85 suggested that EPA should exempt new and modified units with best available control technology ("BACT") limits from the initial MATS nitrogen oxides ("NOx") and carbon monoxide ("CO") tuning requirements.
- **EPA Response:** The tuning requirements are structured as work practice standards to offer flexibility and they help ensure that the burners are in good working order, the controls, as installed, are working properly and the system has been correctly tuned. These requirements also need to be met by when new units are installed.
- If new units were exempt from the requirements, how could EPA ensure that the burners are in good working order?

C. EPA Should Revise Maintenance Requirements That Provide No Environmental Benefits.

Boiler Tune-Ups

- **Summary of Issue:** The Boiler MACT regulations at 40 CFR §63.7515 require an annual tune-up (i.e., boiler adjustment) be conducted "no more than 13 months after the previous tune-up."
- The Class of '85 notes that tracking a compliance deadline based on a calendar year is significantly more manageable than tracking a compliance deadline that does not occur on the same date each year, and, therefore suggests tune-ups be require once every calendar year.
- **EPA Response:** EPA is very interested in providing industry sensible, needed flexibility. Although the current regulation allows 13 months between tune-ups, it doesn't require that facilities wait that full time. A facility can choose to conduct the tune-up at the same time every year. Does this flexibility address your concern?

RICE MACT and NSPS

- **Summary of Issues:** Stationary engines, also called reciprocating internal combustion engines (RICE), are commonly used at power and manufacturing plants for emergency and non-emergency operations to generate electricity and to power pumps and compressors.
- Requirements vary depending on engine type (gasoline or diesel), engine size (by horsepower), number of hours run per year, and designation as "emergency" or "non-emergency" engines.
- Class of '85 provides several recommendations to reduce tracking, maintenance, and reporting burden, including reducing requirements on infrequently run engines and small emergency engines.
- They also want EPA to increase the number of hours that large engines can run prior to triggering certain requirements, to allow engine operators to develop their own operation and maintenance plans for emergency engines instead of following manufacturer's instructions, and to extend the deadline for performing oil changes.

- In addition, they want EPA to revise the definition of an "emergency situation" to include planned situations when power is not available so that they can use on-site non-emergency engines to provide replacement power rather than renting off-site engines.
- **EPA Response:** EPA appreciates your comments on the RICE MACT and NSPS. As we evaluate the requirements for these engines, we would like to discuss these comments with you in more detail.

D. Additional Recommendations to Reduce Regulatory Burdens

Low-Emitting EGUs Under MATS

- **Summary of Issue:** The Class of '85 recommends that EPA amend the MATS provisions addressing the demonstration of low-emitting EGU ("LEE") status to permit use of actual unit operating data, rather than potential maximum operating data.
- The low emitting EGU (or LEE) approach for existing sources represents another of the emissions quantification flexibilities provided by MATS. In exchange for demonstrating and maintaining emissions much lower than those required by the rule, EGU owners or operators are able to avoid installation and operation of sophisticated measurement instruments. Demonstrating LEE status allows units to extend the duration of time between ongoing testing to demonstrate compliance as well as to re-verify LEE program eligibility.
- **EPA Response:** As of 2016, 11% of MATS EGUs have LEE status. EPA understands that you would like more units to achieve LEE status and will consider your suggestions for how to change the provisions to allow more units to be eligible.

MATS Residual Risk Review

- **Summary of Issue:** The Group strongly recommends that EPA complete the residual risk and technology review for coal-fired power plants covered by the MATS. EPA is statutorily required to assess the risk remaining after the implementation of a specific NESHAP within 8 years of the final NESHAP. For MATS, EPA will need to complete this review by 2020.

- **EPA Response:** At this time, EPA is working to complete residual risk and technology reviews for multiple source categories. That said, we can always adjust how we prioritize these reviews while still meeting statutory deadlines.

Acid Rain Program

- **Summary of Issue:** The Acid Rain Program requires electric power plants to reduce emissions of sulfur dioxide ("SO2") and nitrogen oxides ("NOx"), the primary precursors of acid rain. The program also establishes monitoring requirements for SO_2, NOx and CO_2 emissions, volumetric flow and opacity data from affected units.
- According to the Class of '85, ultrasonic meters are the most accurate type of instrument for measuring volumetric flow rates of natural gas, but are subject to more complicated regulatory requirements because they are not explicitly approved under the acid rain monitoring regulations in Appendix D or Appendix E of 40 CFR Part 75. They urge EPA to update the regulations to explicitly approve the use of these monitors.
- **EPA Response:** EPA appreciates your comments and would like to discuss the advantages of using the ultrasonic meters over other monitors. Are the ultrasonic monitors cheaper than other monitors approved for use in the Acid Rain Program?

"Once In, Always In" Policy

- **Summary of Issue:** In May 1995, EPA issued implementing guidance for a number of provisions of its nascent MACT program under section 112 of the CAA (which addresses hazardous air pollutants). The guidance stated that once a source becomes subject to a MACT standard it must always remain subject to that standard, even if in the future it reduces its emissions of hazardous air pollutants below the major source thresholds.
- Over the years, EPA has considered making changes to this policy, publishing (but never finalizing) two separate proposals to alter the policy (in May 15, 2003 and January 3, 2007).
- The Class of '85 urges EPA to withdraw the 1995 guidance.
- **EPA Response:** We have heard similar comments from multiple sources. The agency does not appear to have publicly announced an effort to address this issue, but OAR, in its 5/15/17 memorandum responding to the Regulatory Reform Task Force, indicated a potential willingness to reconsider the policy. If EPA, withdraws the 1995 guidance, would you like EPA to replace the guidance with a regulation?

Clean Power Plan (CPP), New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Power Plants (GHG NSPS for Power Plants), and Related Actions

- Per direction from the President and Administrator Pruitt, EPA has initiated a Review of the CPP and the GHG NSPS for Power Plants, and has withdrawn related regulatory proposals concerning federal plan requirements and model rules for greenhouse gas emissions from power plants.
- *Note: The Class of '85 did not comment on this topic.*

COMMENTS OF THE CLASS OF '85 REGULATORY RESPONSE GROUP

ON THE

REQUEST FOR COMMENTS ON THE "EVALUATION OF EXISTING REGULATIONS"

EPA Docket No. EPA–HQ–OA–2017–0190

I. INTRODUCTION

On April 13, 2017, the U.S. Environmental Protection Agency ("EPA" or "Agency") published in the *Federal Register*, at 82 Fed. Reg. 17,793, a notice entitled "Evaluation of Existing Regulations" ("Notice"), requesting public comment on regulatory reform issues. The Notice was published in response to Executive Order 13777 ("EO"), entitled "Enforcing the Regulatory Reform Agenda," which directs federal agencies to establish Regulatory Reform Task Forces ("Task Forces") to evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification, with the goal of alleviating "unnecessary regulatory burdens."[1] The EO directs the Task Forces to seek input from entities significantly affected by federal regulations in their efforts to identify regulations for reform. EPA's Notice specifically requests comments on EPA regulations "that may be appropriate for repeal, replacement, or modification."[2]

The Class of '85 Regulatory Response Group ("Class of '85" or "Group") respectfully submits these comments in response to the Notice.[3] The Class of '85 is a voluntary ad hoc coalition of approximately 30 electric generating companies from around the country that has been actively involved in the development of Clean Air Act ("CAA") rules and guidance affecting the electric generating industry for over 25 years. Members of the Class of '85 own and operate electric generating units ("EGUs") subject to the CAA in approximately 35 states throughout the country, and will be directly affected by any CAA-related regulations pertaining to the electric generating industry that are repealed, replaced, or modified by EPA.

The Class of '85 encourages EPA to make targeted edits to certain regulatory requirements that are redundant or unnecessary.[4] The changes proposed in these comments would significantly reduce the costs and burdens associated with a number of regulatory requirements, and this streamlining would have no negative environmental impacts, and, in some cases, even positive environmental outcomes.

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[1] 82 Fed. Reg. 12,285 (Mar. 1, 2017).

[2] 82 Fed. Reg. at 17,793.

[3] Attached as Appendix A is a list of the Class of '85 members who support these comments.

[4] Brief descriptions of the numerous regulatory programs addressed in these comments are included in Appendix B.

II. COMMENTS

A. EPA Should Streamline Recordkeeping and Reporting Requirements to Eliminate Duplicative Obligations.

EPA should revise certain provisions of the Code of Federal Regulations ("C.F.R.") to streamline recordkeeping and reporting requirements across the Agency's various regulatory programs. In numerous cases, EGUs are required to submit the same information to the Agency under multiple programs, resulting in duplicative reporting that provides no environmental benefit at the cost of increased staff time. Specific examples of duplicative reporting requirements that EPA should streamline include the following:

- **Greenhouse Gas ("GHG") Emissions Reporting.** EPA should exempt from the requirement to submit carbon dioxide ("CO_2") emissions data pursuant to the GHG Reporting Rule[5] EGUs that already submit to EPA all information needed to calculate CO_2e emissions (*e.g.*, CO_2, nitrous oxide, and methane) pursuant to other rules, such as the Acid Rain Program. For instance, 40 C.F.R. § 98.3(c)(4)(iii)(B) of the GHG Reporting Rule is duplicative of the Acid Rain Program requirement in 40 C.F.R. § 75.64 that EGUs submit to EPA CO_2 mass emissions data. For EGUs subject to these duplicative requirements, submission of this data under the GHG Reporting Rule is superfluous and unnecessary. Eliminating these duplicative requirements would streamline reporting and eliminate a regulatory burden that provides no environmental benefits.

- **Periodic Maximum Achievable Control Technology ("MACT") Reports.** EPA should streamline duplicative reporting requirements in the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Industrial, Commercial, and Institutional and Process Heaters ("Boiler MACT") and Title V regulations. Specifically, EPA should eliminate the requirement to submit annual and biennial reports under the Boiler MACT,[6] where such submissions are duplicative of Title V reports. For example, under the Boiler MACT, periodic reports must include information on whether the source experienced any deviations from an emission limit or operating limit.[7] This requirement is duplicative of the requirement to include in Title V reports information on "[a]ll instances of deviations from permit requirements."[8] The Class of '85 urges EPA to streamline these regulations to reduce the regulatory burden on industry and the administrative burden on EPA.

- **Part 60 Summary Reports.** EPA should eliminate the requirement in Part 60[9] to submit information in a summary report that already is submitted pursuant to the Part

[5] 81 Fed. Reg. 89,188 (Dec. 9, 2016).

[6] *See* 40 C.F.R. § 63.7550.

[7] 40 C.F.R. § 63.7550(d).

[8] 40 C.F.R. § 70.6(3)(iii).

[9] *See* 40 C.F.R. § 60.7(d).

75 Electronic Data Reporting ("EDR") requirements,[10] as the submission of certain information in the summary report is unnecessary and duplicative of the EDR submissions.

- **Part 64 Compliance Assurance Monitoring ("CAM").** EPA should modify the Part 64 CAM provisions[11] to eliminate requirements that have become unnecessary and outdated in light of subsequent regulations. For example, electrostatic precipitator ("ESP") power monitoring under CAM[12] has been rendered unnecessary by continuous particulate matter ("PM") monitoring utilizing either PM Continuous Emissions Monitoring Systems ("CEMS") or PM Continuous Parametric Monitoring Systems ("CPMS"), and testing required by the Mercury and Air Toxics Standards ("MATS").[13]

B. EPA Should Eliminate Monitoring and Testing Requirements That Provide No Environmental Benefits.

The Class of '85 urges EPA to eliminate emission monitoring and equipment testing requirements that provide no environmental benefits. Elimination of these requirements would result in significant cost savings for the electric generating industry with no environmental impact. In certain situations, elimination of equipment testing requirements would actually result in *reduced* emissions. Opportunities to eliminate these environmentally unnecessary (and in some cases, environmentally detrimental) requirements exist in numerous CAA programs, including the following:

- **Monitoring Certification and Quality Assurance/Quality Control ("QA/QC") Redundancies.** EPA should eliminate redundancies between the Part 60 and Part 75 monitoring certification and QA/QC requirements by adding language to Part 60 that provides sources the option to comply only with Part 75 where requirements are duplicative. For example, where Subpart A (*e.g.*, 40 C.F.R. § 60.8 and/or § 60.13), Subpart D, or Subpart GG refer to the appendices in Part 60 for test methods, performance specifications, and QA/QC standards (*e.g.*, Appendix A, B, or F), those references would be replaced by similar references to Part 75.

- **CEMS Certifications on Bypass Stacks.** EPA should reduce the MATS requirements for CEMS certification on bypass stacks in cases where bypass stacks are rarely used (*i.e.*, where bypass stacks operate equivalent to a capacity factor of less than one percent).[14] In these cases, affected sources may be required to bypass *only* for purposes of CEMS certification. For example, one Class of '85 member installed CEMS (PM, mercury, and hydrogen chloride) on the bypass stacks for two

[10] *See* 40 C.F.R. § 75.64.

[11] *See* 40 C.F.R. §§ 64.1-10.

[12] *See* 40 C.F.R. § 64.3.

[13] Table 5 to Subpart UUUUU of Part 63.

[14] *See* 40 C.F.R. § 63.10010(a)(4).

of its units. This company has significantly reduced the use of these bypass stacks, and, in fact, has not used the bypasses since December 2016 and expects very limited use, if any, in the future. Because the company is using the bypass stacks on a very limited basis, it cannot fulfill the CEMS certification requirement unless it runs the stacks specifically for that purpose. In situations like this, the CEMS certification requirement actually results in *increased* emissions because the stacks would not otherwise be in use. Additionally, for some EGUs, the operation of bypass stacks for the sole purpose of CEMS certification could result in emission limit violations. It is illogical that compliance with a monitoring requirement would result in noncompliance with an emission limit. Reducing the frequency of CEMS certification requirements for infrequently used bypass stacks would prevent these unnecessary emissions.

- **Opacity Monitoring Requirements.** EPA should exempt from the Part 60 opacity monitoring requirements[15] units on which a PM CPMS or PM CEMS is installed, as these systems more accurately measure PM emissions than do opacity monitors. In such cases, opacity monitors are unnecessary to assure compliance with PM emissions limits. Relatedly, EPA should edit the text of 40 C.F.R. §§ 60.45(a) and 60.48Da(o)(2) so that EGUs with wet stacks have the option to use opacity monitors as parametric monitors rather than reporting monitors. This is appropriate for EGUs with wet stacks, as opacity monitors are not reliable indicators of PM emissions for facilities with wet scrubbers, as EPA has recognized.[16] Alternatively, EPA could allow EGUs with wet stacks the option of correlating a series of PM stack testing with the opacity monitor results to establish an appropriate compliance limit for the opacity monitor in light of the wet flue gas conditions. Finally, EPA should clarify that Subpart D PM and opacity standards and monitoring requirements apply only when a boiler is operating.[17] Boilers do not generate emissions when they are not combusting fuel, so there is no need for these requirements to apply during these times.

- **Infrequently Operated Reciprocating Internal Combustion Engines ("RICE").** EPA should reduce the RICE MACT monitoring and testing requirements for non-emergency engines that operate less than 50 hours per year.[18] First, EPA should revise the requirement that testing be completed every 8,760 hours of operation or every three years, whichever comes first,[19] to allow the option that testing be completed (1) based on a reasonable number of hours of engine operation (i.e., 500 hours) or (2) every three years. Eliminating the requirement to perform testing every

[15] *See* 40 C.F.R. § 60.45(a); § 60.48Da(o)(2).

[16] *See, e.g.*, 40 C.F.R. § 75.14(b) (exempting EGUs with wet flue gas streams from opacity monitoring requirements).

[17] *See* 40 C.F.R.§ 60.45.

[18] *See* 40 C.F.R. Part 63, Subpart ZZZZ.

[19] *See* 40 C.F.R. Part 63, Subpart ZZZZ, Table 3.

8,760 hours or every three years, whichever comes first, would allow for less frequent testing that would have both economic and environmental benefits. It would avoid forcing units to run and burn a significant amount of fuel solely for the purpose of compliance testing. For example, one Class of '85 member estimates that requiring testing once every three years wastes approximately 10,000 gallons of diesel fuel, as the units are forced to run purely for the purposes of testing. Second, the requirement to continuously monitor catalyst inlet temperature and pressure drop is excessive and provides little benefit.[20] These two parameters should be recorded during periodic compliance testing to verify that they are within the allowable ranges during normal operation.

- **Relative Accuracy Test Audits ("RATA") Testing.** Part 75 requires periodic RATAs of all CEMS.[21] EPA should reduce the number of RATA runs required under Part 75 from nine to three, which would provide just as accurate results with fewer burdens. A study by RMB Consulting & Research, Inc. and the Electric Power Research Institute has found that "if the RATA criteria is [stet] met using the results from the first three, four, five or six test runs, performing additional test runs has no impact on the RATA results and consequently no benefit."[22] *See* Table 1. Accordingly, if the RATA criteria are satisfied using the results from the first three test runs, no additional test runs should be required, and the RATA should be considered complete. Sources should retain the option to perform additional test runs as necessary, pursuant to the current RATA requirements.

[20] *See* 40 C.F.R. Part 63, Subpart ZZZZ, Table 6.

[21] *See* 40 C.F.R. Part 75, Appendix B; § 75.74.

[22] Russell S. Berry and Stephen K. Norfleet, RMB Consulting & Research, Inc., and Charles E. Dene, Electric Power Research Institute, *The Evolution of Part 75 Performance Test Procedures and Specifications*, at http://www.rmb-consulting.com/newpaper/tucson/perfspec.html.

Table 1: Simulated RATA Data[23]						
Run Number	**CEMS Value**	**Reference Method Value**	**Standard Deviation**	**t-value**	**Confidence Coefficient**	**Relative Accuracy**
1	103	100				
2	97	100	4.24	12.71	38.12	38.12
3	103	100	3.46	4.303	8.61	9.61
4	92	100	5.32	3.182	8.46	9.71
5	110	100	6.82	2.776	8.47	9.47
6	88	100	8.08	2.571	8.49	9.65
7	114	100	9.35	2.447	8.64	9.64
8	84	100	10.53	2.365	8.81	9.93
9	117	100	11.56	2.306	8.89	9.77

- **Relative Accuracy Audits ("RAAs").** EPA should eliminate the requirement to perform quarterly RAAs for units that have converted from hardware CEMS to a software-based predictive emission monitoring system ("PEMS").[24] This requirement is unnecessary because, unlike a CEMS, a PEMS is a computer model that does not change over time. These units already are required to perform annual RATA testing, which is sufficient to ensure adequate functioning of the PEMS. Performing RAAs on PEMS is a resource and time-intensive process that does not yield any incremental benefit. For example, one Group member has its plant staff maintain old CEMS sample lines, stack probes, and sample pumps so that they can perform the RAA at ground level rather than climb the stacks with a portable analyzer. This effectively defeats the purpose of replacing the old CEMS system.

- **Linearity.** EPA should allow EGUs to perform CEMS linearity and calibrations under Part 75 when units are offline. It takes approximately one hour to perform a linearity, so it is difficult to complete a linearity on combustion turbines that operate for short periods of time. Performance of a linearity while a unit is offline would have no impact on test accuracy, as the CEMS is monitoring calibration gas and not stack gas. Accordingly, this revision would avoid requiring units to operate longer than they otherwise would (and therefore emitting more than they otherwise would) solely to complete a test.

[23] *Id.*

[24] *See* 40 C.F.R. Part 60, Appendix F, § 5.1.3.

- **Wall Effects Adjustment Factor.** 40 C.F.R. § 75.59(a)(7)(ii)(S) allows for the establishment of a "[c]alculated (site-specific) wall effects adjustment factor determined *during the run*" (emphasis added). However, determining wall effects adjustment factors can take hours, which requires the source owner to maintain the unit at uneconomic loads for longer periods than necessary. EPA should allow EGUs the option to establish a site-specific reference method 2H Wall-Effects adjustment factor under Part 75 so that EGUs no longer need to operate at uneconomic loads for long periods of time just to establish a wall effects adjustment factor.[25]

- **Tuning Requirements for New/Modified Units.** EPA should exempt new and modified units with best available control technology ("BACT") limits from the initial MATS nitrogen oxides ("NOx") and carbon monoxide ("CO") tuning requirements.[26] Since these limits are set based on the "best performing" controls, tuning of newly installed equipment is unnecessary.[27]

C. EPA Should Revise Maintenance Requirements That Provide No Environmental Benefits.

Numerous CAA programs contain maintenance requirements that are time-consuming and burdensome and yet yield negligible environmental benefits. The Class of '85 urges EPA to revise these unnecessary maintenance requirements to reduce the regulatory burden on the electric generating industry. Examples of provisions that should be revised include the following:

- **Emergency Engines Under the RICE MACT and New Source Performance Standards ("NSPS").** The RICE MACT and NSPS limit operation of emergency engines to 100 hours of operation per year for maintenance and readiness testing, 50 of which can be used for non-emergency operation.[28] Additionally, the RICE NSPS requires owners/operators to maintain emergency engines per the manufacturer's specifications.[29] These requirements have two significant ramifications for owners and operators of emergency engines, while providing negligible environmental benefit.

  First, owners/operators must spend an unreasonable amount of time tracking the hours of operation of these engines, as well as the reasons for which operation occurred. The time spent on this tracking is grossly disproportionate to the amount of time that these engines operate. For example, one Group member has over 80 small

[25] *See* 40 C.F.R. § 75.59(a)(7)(ii)(S).

[26] *See* 40 C.F.R. § 63.10005(e).

[27] EPA should consider extending this exemption from initial tuning requirements to existing units with controls that have been determined to be equivalent to BACT pursuant to consent decrees or other regulatory program requirements, such as a regional haze state implementation plan.

[28] 40 C.F.R. § 63.6640(f); 40 C.F.R. § 60.4211(f).

[29] 40 C.F.R. §60.4211(a)(1).

engines (*i.e.*, under 500 horsepower) that are subject to either the RICE MACT or NSPS. On average, these engines each operate approximately 20 hours per calendar year. To document compliance with the hours of operation limit, the company spends an average of six hours per engine, each year, tracking and reporting operations. In other words, for every 20 hours of operating time, the company spends six hours on paperwork—a highly inefficient ratio. Additionally, compliance with the Engine NSPS requirement to maintain emergency engines per the manufacturer's specifications requires burdensome tracking for facilities that own dozens of certified generators from different manufacturers, all of which have different maintenance procedures and schedules.

Second, owners/operators must comply with excessive maintenance requirements for these small, infrequently operated engines. Specifically, the RICE MACT requires owners/operators to perform frequent oil changes or oil analyses,[30] which are unnecessary for infrequently run units and result in the unnecessary and environmentally burdensome disposal of oil. These unnecessary oil changes and oil analyses also are expensive; one Group member estimates that it spends approximately $700 on annual maintenance for each emergency engine (over $55,000 annually combined). Additionally, the RICE NSPS requirement to comply with manufacturer specifications can similarly result in unnecessary oil changes,[31] as well as other unnecessary maintenance procedures, on emergency engines that run infrequently.

The Group proposes three solutions to these problems, all of which would significantly reduce the tracking, reporting, and maintenance burdens discussed above, with negligible environmental impact:

- *First*, the Group urges EPA to amend the RICE MACT and NSPS to exempt emergency engines under 500 horsepower. This would (1) eliminate the excessive tracking requirements for run hours and reasons for run; and (2) eliminate the requirement for unnecessary and environmentally detrimental oil changes or oil analyses under 40 C.F.R. § 63.6625(i)-(j). Instead, oil changes would be performed as needed to properly maintain units in light of how much they have run. These changes would result in significant cost savings and drastically reduce administrative burdens, without changing the environmental benefits of the MACT, as these units are very small with low emissions. At a minimum, EPA should exempt emergency engines under 500 horsepower from tracking requirements.

- *Second*, for emergency engines over 500 horsepower that remain subject to the RICE MACT and NSPS, EPA should eliminate the limitation of non-emergency operation to 50 hours per year; instead, EPA should allow these

[30] 40 C.F.R. § 63.6625(i)-(j).

[31] 40 C.F.R. § 60.4211(a)(1). .

units to operate up to 100 hours per year for maintenance, readiness testing, *and* non-emergency operation (not to include operation as part of a financial arrangement with another entity). This would eliminate the need to track the reasons for which the units operate while ensuring that these units do not operate any more than already is permitted under the current regulatory requirements. Alternatively, EPA should at a minimum exempt these engines from tracking requirements.

- *Third*, EPA should revise the requirement under the RICE NSPS to maintain emergency engines per the manufacturer's specifications to allow EGUs the ***option*** to develop their own operation and maintenance plans that would allow them an opportunity to streamline their maintenance obligations for their small generators. Exercise of this option would have negligible environmental impact, as owners/operators must properly maintain units, including by performing oil changes or oil analyses when appropriate based on how much the engine has actually run, so that they will be available when needed during emergencies, and because these units run very infrequently.

- **Definition of "Emergency Situation" in RICE MACT and NSPS.** EPA has interpreted the definition of an "emergency situation" under the RICE MACT narrowly to mean "a sudden, unplanned and unforeseen event."[32] Because of this narrow interpretation, companies are incentivized to rent higher-emitting diesel generators rather than rely on onsite back-up generators when power is lost to a facility due to planned maintenance, such as when work on a substation that provides power to a facility must be performed. EPA should define "emergency situation" in the RICE MACT and NSPS to clarify that in situations where power is not available, the operation of on-site emergency engines to provide replacement power would be considered an emergency situation. This would result in reduced emissions, as companies would no longer need to rent high-emitting diesel generators purely to avoid exceeding the 100-hour limitation of non-emergency operation.

- **Oil Change Requirements Under the RICE MACT.** EPA should amend 40 C.F.R. § 63.6625(i) to extend the deadline for performing an oil change from two to 20 business days after receiving an adverse oil analysis result. This would allow sufficient time to resample to confirm an adverse result and avoid unnecessary oil changes, which require the environmentally burdensome disposal of oil.

[32] *See, e.g.*, Letter from Becky Weber, Director, EPA Region 7 Air and Waste Management Division, to Floyd Gilzow, Director of Member Relations and Public Affairs, Missouri Public Utility Alliance, re: 40 CFR Part 63 National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; Final Rule Dated March 3, 2010, available at http://c.ymcdn.com/sites/www.kmunet.org/resource/resmgr/Presentations_Misc_Docs/EPA%20Response%20to%20MPUA.pdf.

- **Boiler Tune-Ups.** EPA should amend the frequency of required tune-ups under the Boiler MACT to be based on calendar years (*e.g.*, once every calendar years), instead of every 13 months.[33] From a compliance perspective, tracking compliance deadlines based on a calendar year is significantly more manageable than tracking compliance deadlines that do not occur on the same date each year.

D. Additional Recommendations to Reduce Regulatory Burdens.

The Group urges EPA to make the following revisions to its CAA-related regulations to further streamline regulatory requirements while still protecting the environment:

- **Low-Emitting EGUs Under MATS**. The Group recommends that EPA amend the MATS provisions addressing the demonstration of low-emitting EGU ("LEE") status to permit use of actual unit operating data, rather than potential maximum operating data.[34] Eligibility for LEE status requires that a source calculate potential annual mercury emissions assuming "maximum potential annual heat input to the unit"[35] or "maximum potential annual electricity generation"[36] times 8,760 hours. This approach employs unreasonable assumptions about unit operation, as using maximum potential heat input or electricity generation vastly overestimates annual mercury emissions because coal-fired EGUs do not operate at maximum capacity constantly for every hour of a calendar year. It would be more accurate to use *actual* data to calculate annual mercury emissions. The Group urges EPA to amend the MATS so that the mercury emission rate result from the 30-day test (as described at 40 C.F.R. § 63.10005(h)(3)) performed during the reporting year would be multiplied by the actual annual heat input to the unit or annual electricity generation (instead of the maximum potential) and reported as part of the semiannual compliance report. This would allow more units to qualify as LEE, which allows for reduced testing obligations but also imposes more stringent mercury emissions limits. Overall, this would alleviate testing and reporting burdens, with no increase in mercury emissions, and could even decrease emissions.

- **Clarification in the MATS Rule**. The Group urges EPA to clarify the reference value to be used in the system integrity checks ("SICs") required under the MATS.[37] EPA also should clarify or update 40 C.F.R. § 63.10023(b) regarding PM CPMS operating limits to expressly allow for the use of stack concentration or other raw data signals in addition to milliamps to determine site specific operating limits ("SSOL"). Section 63.10023(b), which provides instructions on how to calculate the SSOL from the performance test, lists only milliamps and not stack concentration or other raw

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[33] *See* 40 C.F.R. § 63.7515(d).

[34] *See* 40 C.F.R. § 63.10005(h).

[35] 40 C.F.R. § 63.10005(h)(3)(iii)(C)(1).

[36] 40 C.F.R. § 63.10005(h)(3)(iii)(C)(2).

[37] *See* 40 C.F.R. Part 63, Subpart UUUUU, Appendix A, § 4.1.1.3.

data signals. The omission of stack concentration or other raw data signals from 40 C.F.R. § 63.10023(b) appears to be an oversight. For instance, 40 C.F.R. § 63.10023(a) expressly allows the use of multiple different output values (*e.g.*, milliamps, stack concentration, or other raw data signals) from the PM CPMS during the performance test. Further, Table 7 to Subpart UUUUU lists milliamps, PM concentration, and raw data signals as acceptable outputs to monitor for compliance with the 30 day operating limit. EPA should revise 40 C.F.R. § 63.10023(b) to similarly expressly list stack concentration or other raw data signals in addition to milliamps. This would avoid the regulatory confusion that could occur if regulators view milliamps as the only acceptable output to monitor because it is the only output specifically listed in 40 C.F.R. § 63.10023(b).

- **MATS Residual Risk Review**. The Group strongly recommends that EPA complete the residual risk and technology review for coal-fired power plants covered by the MATS. Section 112(f)(2) of the CAA requires EPA to assess the risk remaining after the implementation of a specific NESHAP. Specifically, within eight years of a final NESHAP, EPA must promulgate an emission standard, if promulgation of such a standard is required in order to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Because the MATS was finalized and published in 2012, EPA is required to complete this review by 2020. EPA should undertake a rulemaking to fulfil this nondiscretionary statutory obligation.

- **Once in, Always in.** On May 16, 1995, EPA released a memorandum titled "Potential to Emit for MACT Standards-Guidance on Timing Issues."[38] This guidance document clarified that "facilities that are major sources for [hazardous air pollutants ("HAPs")] on the 'first compliance date' are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained." This interpretation dis-incentivizes changes to major sources that would reduce emissions because these units will always be regulated as major sources. The Group urges EPA to withdraw this guidance document.

- **AP-42 Emission Factors.** EPA has been publishing a compilation of air pollutant factors (AP-42) since 1968.[39] The compilation currently contains emission factors and process information for more than 200 air pollution source categories. The Fifth Edition of AP-42 was published over 20 years ago, in January 1995. While EPA has published some supplements and updates to that edition, the Group encourages EPA to make long-overdue revisions to the AP-42 emission factors. Many of the current factors are based on outdated technology and small sample sizes, which results in

[38] John S. Seitz, *Potential to Emit for MACT Standards-Guidance on Timing Issues* (1995), https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf

[39] R.L. Duprey, *Compilation of Air Pollutant Factors* (1968), https://www3.epa.gov/ttn/chief/ap42/oldeditions/1st_edition/ap42_phs_1968.pdf

inaccurate estimation of emissions. This impacts permit application development and compliance with reporting requirements. Updating the AP-42 emission factors will increase accuracy and help streamline the permitting process.

- **Ultrasonic Flow Monitors.** The Acid Rain Program establishes requirements for the monitoring, recordkeeping, and reporting of SO_2, NOx, CO_2, volumetric flow, and opacity data from affected units.[40] These monitoring requirements are performance-based, which means they generally do not require that a source use a particular type of CEMS.[41] However, the regulatory requirements differ depending on the particular type of CEMS utilized. Ultrasonic meters, which measure volumetric natural gas flow rates, are the most accurate type of meter, but are subject to more complicated regulatory requirements. Because ultrasonic monitoring is not explicitly approved under either Appendix D or Appendix E, use of ultrasonic monitors is conditioned upon development and implementation of a QA/QC program for the systems.[42] To ensure regulatory compliance, the ultrasonic meter readings must be compared to a primary standard (AGA/ASME/NIST) meter or to an in-line reference meter that has been tested for accuracy during the previous year.[43] For the in-line reference meter approach, the entity must run three separate tests for three different load levels each with a minimum length of 20 minutes.[44] This means the entity must complete at least nine 20 minute runs within seven consecutive unit operating days.[45] For ongoing QA/QC, this testing must be repeated every four fuel flow meter operating quarters, where an operating quarter is a quarter in which the fuel flow meter has operated for at least 168 partial or full operating hours.[46] Thus, the current regulation dis-incentivizes installation of the most advanced and modern monitoring technology by imposing significantly more testing requirements. The Class of '85 urges EPA to revise these regulations to update the monitoring systems approved under Appendix D and Appendix E to address the use of ultrasonic meters. This will allow companies to install the best monitoring technology without an increased regulatory burden.

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[40] *See* 40 C.F.R. § 75.1.

[41] *See* Part 75 CEMS Field Audit Manual, EPA at 15 (July 16, 2013), https://www.epa.gov/sites/production/files/2015-05/documents/part_75_cems_field_audit_manual.pdf

[42] 40 C.F.R Part 75, Appendix B.

[43] 40 C.F.R. Part 75, Appendix D, § 2.1.5-2.1.6(b).

[44] *Id.* § 2.1.5.2.

[45] *Id.*

[46] *Id.* § 2.1.6(a).

III. CONCLUSION

The Class of '85 appreciates the opportunity to comment on existing regulations and make recommendations regarding their repeal, replacement, or modification. The Group urges EPA to follow the recommendations in these comments, which would alleviate "unnecessary regulatory burdens." Specifically, adoption of the proposed regulatory reforms in these comments would significantly reduce costs associated with recordkeeping, reporting, testing and maintenance, while maintaining, and in some cases improving, environmental protection.

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Appendix A

CLASS OF '85 REGULATORY RESPONSE GROUP

AES Corporation
Alliant Energy Corporation
Arizona Electric Power Cooperative, Inc.
Arkansas Electric Cooperative Corporation
City of Tallahassee
Cleco Corporation
Cogentrix Energy Power Management, LLC
Dairyland Power Cooperative
Dayton Power & Light Company
Entergy Services, Inc.
Florida Municipal Electric Association
Florida Municipal Power Agency
Gainesville Regional Utilities
Great River Energy
Hawaiian Electric Company, Inc.
Indianapolis Power & Light Company
JEA
Lakeland Electric
Louisville Gas & Electric/Kentucky Utilities
National Grid
NextEra Energy, Inc.
OGE Energy Corp.
Orlando Utilities Commission
PowerSouth Energy Cooperative
Public Service Company of New Mexico
Salt River Project
Talen Energy
Tampa Electric Company
Westar Energy
Western Farmers Electric Cooperative
Xcel Energy Inc.

Appendix B

Rule	C.F.R.	*Federal Register*	Description
Acid Rain Program	40 C.F.R. Parts 72-78	58 Fed. Reg. 3,590 (Jan. 11, 1993); 58 Fed. Reg. 15,634 (Mar. 23, 1993); 62 Fed. Reg. 55,460 (Oct. 24, 1997)	The Acid Rain Program, established under Title IV of the Clean Air Act ("CAA"), requires electric generating units ("EGUs") to reduce emissions of sulfur dioxide ("SO_2") and nitrogen oxides ("NOx"), the primary precursors of acid rain.
Boiler MACT	40 C.F.R. Part 63, Subpart DDDDD	80 Fed. Reg. 72,790 (Nov. 20, 2015)	The Boiler Maximum Achievable Control Technology ("MACT") rule sets national emission standards for hazardous air pollutants ("NESHAPs") reflecting MACT for industrial boilers, commercial and institutional boilers, and process heaters that are located at major sources (*i.e.*, sources that emit or have the potential to emit above a certain threshold of hazardous air pollutants ("HAPs") per year) for various HAPs under Section 112 of the CAA.
CAM Rule	40 C.F.R. Part 64	62 Fed. Reg. 54,900 (Oct. 22, 1997)	The Compliance Assurance Monitoring ("CAM") Rule establishes enhanced monitoring and compliance certification requirements for major stationary sources that are required to obtain Title V operating permits.
GHG Reporting Rule	40 C.F.R. Part 98	74 Fed. Reg. 56,260 (Oct. 30, 2009); 81 Fed. Reg. 89,188 (Dec. 9, 2016)	The Greenhouse Gas ("GHG") Reporting Rule requires monitoring and reporting of GHG emissions from sources across multiple sectors of the economy, including EGUs, that emit above a certain threshold of carbon dioxide equivalent per year.
MATS	40 C.F.R. Part 63, Subpart	77 Fed. Reg. 9,304 (Feb.	The Mercury and Air Toxics Standards ("MATS") rule sets NESHAPs for EGUs for various HAPs, including mercury,

	UUUUU	16, 2012)	under Section 112 of the CAA.
Part 60	40 C.F.R. Part 60	36 Fed. Reg. 24,877 (Dec. 23, 1971)	Part 60 establishes standards of performance for new stationary sources, including general provisions under Subpart A; standards of performance for fossil fuel-fired steam generators under Subpart D; and standards of performance for electric utility steam generating units under Subpart Da. Part 60 also contains appendices that establish testing procedures that must be followed to establish compliance with the requirements of the various subparts.
RICE MACT	40 C.F.R. Part 63, Subpart ZZZZ	78 Fed. Reg. 6,674 (Jan. 30, 2013)	The Reciprocating Internal Combustion Engine ("RICE") MACT sets NESHAP reflecting MACT for RICE located at major or area sources for various HAPs under Section 112 of the CAA.
RICE NSPS	40 C.F.R. Part 60, Subparts IIII and JJJJ	78 Fed. Reg. 6,674 (Jan. 30, 2013)	The RICE New Source Performance Standards ("NSPS") set performance standards for emissions from new, modified, and reconstructed stationary compression ignition internal combustion engines and stationary spark ignition internal combustion engines under Section 111(b) of the CAA.
Title V Program	40 C.F.R. Parts 70 and 71	57 Fed. Reg. 32,250 (July 21, 1992)	Title V of the CAA requires major sources and some non-major sources to obtain and operate in compliance with an operating permit that contains all applicable CAA requirements for the source.

To: Schwab, Justin[Schwab.Justin@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
From: Feeley, Drew (Robert)
Sent: Thur 3/22/2018 9:13:05 PM
Subject: RE: Data
Data Access DRAFT NPRM 03222018.docx
FR Notice on Data Access Guidelines_3.19.2018docx (002).docx

I made some grammar and style edits, and removed duplicate language in some areas to improve the flow.

From: Schwab, Justin
Sent: Thursday, March 22, 2018 1:12 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Data

Attached please find (1) a clean draft (based on a shell CCILO put together – all the alphabet soup, per Brittany, is something OP can handle on the back end); (2) the redline sent to me following Monday's call.

I have moved everything out of the "guidelines" that didn't seem like it would work as reg text, and put it in the preamble section. If anything ended up on the cutting room floor, I'm happy to put it back in (or have you all do that).

To: Woods, Clint[woods.clint@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
From: Schwab, Justin
Sent: Fri 4/20/2018 10:31:31 PM
Subject: Data - redline
WORKING REDLINE Data Access Draft - OIRA comments 4-20-18.docx

For the section Clint identified earlier as problematic, here is the solution we've come up with. Clint asks that you all focus on this first:

Attorney Client / Ex. 5

To: Bolen, Brittany[bolen.brittany@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Leopold, Matt[Leopold.Matt@epa.gov]
From: Woods, Clint
Sent: Fri 4/20/2018 6:57:20 PM
Subject: Fwd: EPA - Data Access NPRM - comments
Data Access Draft - EPA - 4-17-18 - CLEAN_suggestions_ceq.docx
ATT00001.htm
Data Access Draft - OIRA comments_4-20-18.docx
ATT00002.htm

Taking a look now - We may want to schedule some time w/ OIRA Monday if major concerns are IDed in next hour

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 20, 2018 at 2:53:55 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>
Subject: FW: EPA - Data Access NPRM - comments

From: Kim, Jim H. EOP/OMB [mailto: EOP / Ex. 6
Sent: Friday, April 20, 2018 2:43 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Laity, Jim A. EOP/OMB < EOP / Ex. 6 Schwab, Margo EOP/OMB EOP / Ex. 6
Subject: EPA - Data Access NPRM - comments

Hi Josh,

Please find attached our comments and CEQ's comments on the Data Access draft. We are providing line edits designed to:

Deliberative Process / Ex. 5

However, we remain concerned that, even with these changes

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We will also pass along other agencies' comments as we receive them.

Let me know if you have questions.

Thanks,
Jim

James Kim, Ph.D., DABT
Office of Information and Regulatory Affairs
Office of Management and Budget

EOP / Ex. 6

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Schwab, Justin[Schwab.Justin@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]
From: Woods, Clint
Sent: Wed 4/11/2018 3:46:59 PM
Subject: RE: Data - redline
Data Access DRAFT NPRM 04-11-2018.docx

Attached should be clean version with all changes made this week incorporated – Thanks!

From: Bolen, Brittany
Sent: Wednesday, April 11, 2018 11:44 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re: Data - redline

Deliberative Process / Ex. 5. Thanks so much Clint.

Sent from my iPhone
On Apr 11, 2018, at 11:22 AM, Woods, Clint <woods.clint@epa.gov> wrote:

> Sorry about that, missed updated version and we're reconciling – Justin is adding the statutory authority piece in and we'll get back to you in the next 20 mins. **Deliberative Process / Ex. 5**
>
> ---
>
> **From:** Bolen, Brittany
> **Sent:** Wednesday, April 11, 2018 11:10 AM
> **To:** Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
> **Cc:** Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
> **Subject:** RE: Data - redline
>
> Justin, what is your availability to insert that? If it's that simple, is someone else available to please make that edit,
>
> **Deliberative Process / Ex. 5**
>
> **From:** Schwab, Justin
> **Sent:** Wednesday, April 11, 2018 9:56 AM
> **To:** Woods, Clint <woods.clint@epa.gov>
> **Cc:** Bolen, Brittany <bolen.brittany@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
> **Subject:** Re: Data - redline
>
> On the bubble directed to OGC: the statutory authority should copy the cites given in the authority section in the body of the preamble. I can make that change later today if people want me to.
>
> Sent from my iPhone
> On Apr 10, 2018, at 1:22 PM, Woods, Clint <woods.clint@epa.gov> wrote:
>
> **Deliberative Process / Ex. 5**
>
> ---
>
> **From:** Schwab, Justin
> **Sent:** Monday, April 9, 2018 2:27 PM
> **To:** Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>
> **Cc:** Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
> **Subject:** RE: Data - redline

Deliberative Process / Ex. 5

From: Bolen, Brittany
Sent: Monday, April 9, 2018 1:46 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: Data - redline
Importance: High

Deliberative Process / Ex. 5

Thanks,
Brittany

From: Schwab, Justin
Sent: Sunday, April 8, 2018 7:33 PM
To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Data - redline

Looks good to me!

From: Woods, Clint
Sent: Sunday, April 8, 2018 3:13 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Data - redline

Attached should have updated reg text (include § on LNT) and a couple minor additions in request for comment section.

From: Schwab, Justin
Sent: Friday, April 6, 2018 10:44 AM
To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Data - redline

Please find attached. My redline mostly at 3 and 5. As discussed, I have not touched the rest of the shell, or the proposed reg text. Please let me know if you have any questions or comments. I will forward to Matt as a FYI/FYSA.
<Data Access DRAFT NPRM 04062018 4-10-18 cw.docx>

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Nickerson, William
Sent: Tue 4/24/2018 5:24:05 PM
Subject: Strengthening Transparency in Regulatory Science
Data Access Draft_signature 4 24.docx

The signature version

To: Woods, Clint[woods.clint@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Leopold, Matt[Leopold.Matt@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
From: Schwab, Justin
Sent: Thur 4/19/2018 5:13:39 PM
Subject: RE: DOJ feedback on Data Access NPRM
EDIT 04182017 Data Access Draft - EPA - 4-17-18 - CLEAN.docx

Here's a slight redline – added some statutory cites to the statutory authority sections (at pages 3 and 10).

From: Woods, Clint
Sent: Thursday, April 19, 2018 11:53 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: RE: DOJ feedback on Data Access NPRM

I can be available at 2:45 – Thanks!

From: Bolen, Brittany
Sent: Thursday, April 19, 2018 11:13 AM
To: Leopold, Matt <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: DOJ feedback on Data Access NPRM
Importance: High

Do folks have availability today at 245pm to start this call? I know Justin and I will be in a meeting through 3pm.

From: Laity, Jim A. EOP/OMB [mailto: EOP / Ex. 6
Sent: Thursday, April 19, 2018 11:07 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Palmieri, Rosario A. EOP/OMB EOP / Ex. 6 Schwab, Margo EOP/OMB < EOP / Ex. 6
EOP / Ex. 6
Subject: Review of Strengthening Transparency and Validity in Regulatory Science NPRM

Brittiany: I will be coordinating the review of this NPRM. We distributed last night and gave EOP offices and DOJ until cob today for initial comments. DOJ had already seen it earlier in the week and are prepared to provide verbal comments to EPA at 2:45 today. This is the only time they have available today. Does that work for you folks? Please let whomever from EPA who needs to be on the call know. Also who should be my primary contact at EPA for this review?

Jim Laity
Chief, Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street
Washington, DC 20503
EOP / Ex. 6

To: Schwab, Justin[Schwab.Justin@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Woods, Clint
Sent: Sun 4/8/2018 7:13:26 PM
Subject: RE: Data - redline
Data Access DRAFT NPRM 04062018 (redline from3222018) cw.docx

Attached should have updated reg text (include § on LNT) and a couple minor additions in request for comment section.

From: Schwab, Justin
Sent: Friday, April 6, 2018 10:44 AM
To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Data - redline

Please find attached. My redline mostly at 3 and 5. As discussed, I have not touched the rest of the shell, or the proposed reg text. Please let me know if you have any questions or comments. I will forward to Matt as a FYI/FYSA.

To: Bolen, Brittany[bolen.brittany@epa.gov]; Woods, Clint[woods.Clint@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Beck, Nancy[beck.nancy@epa.gov]; Feeley, Drew (Robert)[Feeley.Drew@epa.gov]
From: Schwab, Justin
Sent: Thur 3/22/2018 5:12:03 PM
Subject: Data
FR Notice on Data Access Guidelines_3.19.2018docx.docx
Data Access DRAFT NPRM 03222018.docx

Attached please find (1) a clean draft (based on a shell CCILO put together – all the alphabet soup, per Brittany, is something OP can handle on the back end); (2) the redline sent to me following Monday's call.

Deliberative Process / Ex. 5

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Schwab, Justin[Schwab.Justin@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
From: Woods, Clint
Sent: Tue 4/17/2018 4:25:14 PM
Subject: Updated Data Access Draft
Data Access Draft - EPA - 4-17-18 - CLEAN.docx
Data Access Draft - EPA - 4-17-18 - TRACK CHANGES VERSION.docx

Attached version addressed comments from SP, OMB, and you all - Note that one has changes tracked and the other is clean. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

To: Bolen, Brittany[bolen.brittany@epa.gov]; Leopold, Matt[Leopold.Matt@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]; Yamada, Richard (Yujiro)[yamada.richard@epa.gov]
From: Woods, Clint
Sent: Mon 4/23/2018 6:54:54 PM
Subject: FW: EPA NPRM Call Regulatory Science
data Access Draft -OIRA Response to EPA - 4-23-18 oira4 cw.docx

My responses to OIRA's updates. Need to 2x check that section #s and request for comment references are still accurate. Will plan to send back by 4:30 unless there are red flags. Where are we on updated CBI contact & language on adding new subpart? Thanks!

From: Kim, Jim H. EOP/OMB [mailto:James_H_Kim@omb.eop.gov]
Sent: Monday, April 23, 2018 2:16 PM
To: Palmieri, Rosario A. EOP/OMB <EOP / Ex. 6 aity, Jim A. EOP/OMB EOP / Ex. 6 Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ EOP / Ex. 6 ; Moran, John S. EOP/WHO EOP / Ex. 6 ; Bremberg, Andrew P. EOP/WHO < EOP / Ex. 6 ; Herz, James P. EOP/OMB EOP / Ex. 6 Brooke, Francis J. EOP/OVP <E EOP / Ex. 6 onathan.brightbill@usdoj.gov; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB EOP/Ex.6 Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Woods, Clint <woods.clint@epa.gov>; David.Gualtieri@usdoj.gov; eric.t.gormsen@usdoj.gov; Neumayr, Mary B. EOP/C EOP / Ex. 6 ; Hickey, Mike J. EOP/OMB EOP / Ex. 6
Subject: RE: EPA NPRM Call Regulatory Science

Dear Interagency Reviewers:

Here are OIRA's suggested revisions consistent with the discussion on this morning's call. This version shows redline/strikeout relative to the draft that EPA sent on Sunday afternoon. Please let us know ASAP if you have any further comments

Jim

From: Kim, Jim H. EOP/OMB
Sent: Monday, April 23, 2018 10:59 AM
To: Palmieri, Rosario A. EOP/OMB < EOP / Ex. 6 ; Laity, Jim A. EOP/OMB < EOP / Ex. 6 'Bolen, Brittany' <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ < EOP / Ex. 6 >; Moran, John S. EOP/WHO < EOP / Ex. 6 ; Bremberg, Andrew P. EOP/WHO < EOP / Ex. 6 >; Herz, James P. EOP/OMB < EOP / Ex. 6 Brooke, Francis J. EOP/OVP < EOP / Ex. 6 jonathan.brightbill@usdoj.gov; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB < EOP / Ex. 6 ; 'schwab.justin@epa.gov' <schwab.justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; woods.clint@epa.gov; David.Gualtieri@usdoj.gov; Eric.T.Gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ < EOP / Ex. 6
Subject: RE: EPA NPRM Call Regulatory Science

Hi all,

Please find attached some additional edits for discussion at 11AM.

Thanks,
Jim

-----Original Appointment-----
From: Palmieri, Rosario A. EOP/OMB
Sent: Monday, April 23, 2018 8:58 AM
To: Palmieri, Rosario A. EOP/OMB; Laity, Jim A. EOP/OMB; 'Bolen, Brittany'; Szabo, Aaron L. EOP/CEQ; Moran, John S. EOP/WHO; Bremberg, Andrew P. EOP/WHO; Herz, James P. EOP/OMB; Brooke, Francis J. EOP/OVP; jonathan.brightbill@usdoj.gov; Beck, Nancy; Schwab, Margo EOP/OMB; 'schwab.justin@epa.gov'; Kim, Jim H. EOP/OMB; Yamada, Richard (Yujiro); woods.clint@epa.gov; David.Gualtieri@usdoj.gov; Eric.T.Gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ
Subject: EPA NPRM Call Regulatory Science
When: Monday, April 23, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial-In: Personal Phone / Ex. 6

To: Woods, Clint[woods.clint@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Schwab, Justin
Sent: Fri 4/6/2018 2:44:00 PM
Subject: Data - redline
Data Access DRAFT NPRM 04062018 (redline from3222018).docx

Please find attached. My redline mostly at 3 and 5. As discussed, I have not touched the rest of the shell, or the proposed reg text. Please let me know if you have any questions or comments. I will forward to Matt as a FYI/FYSA.

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Fri 5/25/2018 8:17:21 PM
Subject: Accomplishments
Reg Reform Accomplishments 05.25.2018.docx

Please see attached. I am working on the "Wins" document.

Will Lovell
Policy Advisor, Office of Policy
U.S. Environmental Protection Agency
(202) 564-5713
Lovell.William@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Dravis, Samantha
Sent: Mon 9/25/2017 8:16:50 PM
Subject: FW:
Accomplishments - 6.5.2017.docx

From: Lovell, Will (William)
Sent: Monday, September 25, 2017 10:58 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE:

Deliberative Process / Ex. 5

From: Lovell, Will (William)
Sent: Monday, September 25, 2017 10:52 AM
To: Letendre, Daisy <letendre.daisy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE:

Please see attached.

From: Letendre, Daisy
Sent: Monday, September 25, 2017 10:51 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Subject: Re:

Will can you send the latest update on this?

Sent from my iPhone
On Sep 25, 2017, at 10:44 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

Can you send me the latest EPA accomplishments list you were working on? This would be from a while ago, don't

Deliberative Process / Ex. 5

To: Bolen, Brittany[bolen.brittany@epa.gov]; Letendre, Daisy[letendre.daisy@epa.gov]
Cc: Rees, Sarah[rees.sarah@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]
From: Germann, Sandy
Sent: Mon 8/14/2017 3:04:08 PM
Subject: RE: 230 DDL - ACTION: CQ Roll Call re: EO

Thank you!

Sandy Germann
US EPA Office of Policy
Personal Phone / Ex. 6
germann.sandy@epa.gov

From: Bolen, Brittany
Sent: Monday, August 14, 2017 10:56 AM
To: Germann, Sandy <Germann.Sandy@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: 230 DDL - ACTION: CQ Roll Call re: EO

This is fine with me. Thanks.

From: Germann, Sandy
Sent: Monday, August 14, 2017 7:47 AM
To: Letendre, Daisy <letendre.daisy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: 230 DDL - ACTION: CQ Roll Call re: EO

Brittany, good morning. Just checking back on this. Please let us know if OK to provide. (OPA got an extension). Thank you!

Sandy Germann
US EPA Office of Policy
Personal Phone / Ex. 6
germann.sandy@epa.gov

From: Letendre, Daisy
Sent: Friday, August 11, 2017 4:13 PM
To: Germann, Sandy <Germann.Sandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: 230 DDL - ACTION: CQ Roll Call re: EO

Response here is fine with me. Brittany, do you agree?

From: Germann, Sandy
Sent: Friday, August 11, 2017 10:40 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: 230 DDL - ACTION: CQ Roll Call re: EO

Brittany, Daisy, Please see the media request below. Note, we prepared a Q&A on this Q for the release of the Spring Regulatory Agenda. Here is what we prepared then:

Deliberative Process / Ex. 5

Sandy Germann

US EPA Office of Policy
Personal Phone / Ex. 6
germann.sandy@epa.gov

From: Jones, Enesta
Sent: Friday, August 11, 2017 10:24 AM
To: Germann, Sandy <Germann.Sandy@epa.gov>
Cc: Jones, Enesta <Jones.Enesta@epa.gov>
Subject: ACTION: CQ Roll Call re: EO

Hi Sandy,

Reporter: Jackie Toth
DDL: 2:30 p.m. today

Can the EPA please comment on any processes or plans it has in place to adhere to the President's Jan. 30executive order on Reducing Regulation and Controlling Regulatory Costs, specifically as the order requires two rules be eliminated for each new one issued?

Correspondence Management System
Control Number: AX-17-000-6852
Printing Date: March 29, 2017 04:46:33

Citizen Information

Citizen/Originator: **Gloria, Todd**
Organization: Assembly California Legislature
Address: State Capitol, P.O. Box 942849, Sacramento, CA 94249-0078

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-6852	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	Apr 13, 2017	**# of Extensions:**	0
Letter Date:	Mar 16, 2017	**Received Date:**	Mar 29, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	RA-R9-Regional Administrator - Region 9	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Sewage spill in the Tijuana River
Instructions: RA-R9-Prepare draft response for signature by the Regional Administrator for Region 9
Instruction Note: N/A
General Notes: N/A
CC: OCIR - Office of Congressional and Intergovernmental Relations
OLEM - Office of Land and Emergency Management
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R9	Mar 29, 2017	Apr 13, 2017	N/A
	Instruction: RA-R9-Prepare draft response for signature by the Regional Administrator for Region 9				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0078
(916) 319-2078
FAX (916) 319-2178

Assembly
California Legislature

TODD GLORIA
ASSEMBLYMEMBER, SEVENTY-EIGHTH DISTRICT

March 16, 2017

The Honorable Rex W. Tillerson
Secretary of State
United States Department of State
2201 C Street NW
Washington, D.C. 20520

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Secretary Tillerson and Administrator Pruitt,

It is with the utmost concern that I write to you regarding the recent approximation of the 143 million gallon sewage spill in the Tijuana River, the worst sewage spill in the region in over a decade to impact our waters along Southern California.

According to the International Boundary and Water Commission's (IBWC) report, the discharge occurred February 6th through February 23rd, 2017. While a multitude of inquiries were made during this time to the IBWC, the City of Imperial Beach's requests for information were blatantly ignored. The health of my constituents has been negatively impacted by the contaminated waters and failing to notify the public of this environmental disaster is unconscionable.

I am grateful for the efforts put forth by our region's leaders, including Congressman Scott Peters and Congressman Juan Vargas, imploring our federal government to prioritize the health and wellbeing of our residents and their families along the coastal shoreline. What happened was unacceptable and the families in our districts and neighboring communities, on both sides of the border, deserve better.

The decision made by your respective departments to further investigate and allocate the necessary time and resources to resolve this ongoing issue has reassured our constituents that our federal government is working to protect the US-Mexico border region.

I respectfully request that you continue to work in collaboration with the affected municipalities in San Diego County, and hold those responsible for the lack of attention given to this spill accountable for their reckless and negligent conduct. It is my hope that the investigation by the IBWC will result in improved communication ensuring that a failure of this magnitude doesn't happen again.

Thank you for your attention and consideration of this request. If I can be a resource for you, please do not hesitate to contact me.

Sincerely,

TODD GLORIA
Assemblymember, 78th District

cc: The Honorable Juan Vargas, Member of Congress, 51st Congressional District
The Honorable Scott Peters, Member of Congress, 52nd Congressional District
The Honorable Edward Drusina, Commissioner, International Boundary and Water Commission, U.S. Section
The Honorable Serge Dedina, Mayor, City of Imperial Beach, California
The Honorable Kevin Faulconer, Mayor, City of San Diego, California

Correspondence Management System
Control Number: AX-17-000-6859
Printing Date: March 29, 2017 04:38:52

Citizen Information

Citizen/Originator: **Good, Lynn J.**
Organization: Duke Energy
Address: 550 South Tryon Street, Charlotte, NC 28202

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-6859	**Alternate Number:**	N/A
Status:	For Your Information	**Closed Date:**	N/A
Due Date:	N/A	**# of Extensions:**	0
Letter Date:	Mar 16, 2017	**Received Date:**	Mar 29, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	SNR-Signature Not Required	**Signature Date:**	N/A

File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Thank you to the Administrator for meeting; Looking forward to collaborating on efforts to improve the regulatory development process
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: Thank you note from the Administrator under control number AX-17-000-6407 (jl)
CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Jacqueline Leavy	OEX	OP	Mar 29, 2017

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Control Created	Mar 29, 2017
Jacqueline Leavy	OEX	Forward control to OP	Mar 29, 2017

Comments

DUKE ENERGY

Lynn J. Good
Chairman, President & CEO
Duke Energy Corporation
550 South Tryon Street
Charlotte, NC 28202

Mailing Address:
DEC 48 / P.O. Box 1321
Charlotte, NC 28201

*phone: **704.382.7649***
fax 980.373.1820

March 16, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

It was a pleasure meeting you in Houston during CERAWeek. I enjoyed our conversation and your luncheon remarks outlining your vision for transforming the Environmental Protection Agency to focus on both protecting the environment and supporting economic growth. And, I appreciated your remarks at the EEI CEO meeting earlier this week where you highlighted your focus on process, the rule of law and cooperative federalism.

During our conversation in Houston, we talked about the importance of streamlining the siting and permitting process for projects such as pipelines and grid investments. A more streamlined approach would help accelerate the industry's infrastructure investments and enable us to continue providing affordable, reliable electricity and natural gas to consumers and businesses.

It also was heartening to hear your plan to better utilize EPA's Office of Policy. For capital-intensive companies like ours, regulatory stability enables the long-range planning necessary to invest in infrastructure that our customers value. A more active Office of Policy could improve the quality and effectiveness of regulations by ensuring a transparent decision-making process that evaluates a wide range of considerations.

Your remarks at EEI suggesting regular collaboration and engagement to look at the regulatory horizon, five and ten years ahead, were heartening. I look forward to working with you and supporting that effort. I have asked my team to follow up with Samantha to see how we can be of assistance on this and other efforts to improve the regulatory development process.

Scott, I wish you all the best as you begin your journey leading the agency. As I said during our meeting, we welcome the opportunity to work with you on these important issues and serve as a resource for you and your team. Please don't hesitate to contact me at any time.

Sincerely yours,

Lynn J. Good
Chairman, President & CEO

Correspondence Management System
Control Number: AX-17-000-6871
Printing Date: March 30, 2017 10:59:24

Citizen Information

Citizen/Originator: **Wade, Sam**
Organization: National Rural Water Association
Address: 2915 South 13th Street, Duncan, OK 73533

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-6871	**Alternate Number:**	7787 5574 2946
Status:	Pending	**Closed Date:**	N/A
Due Date:	Apr 14, 2017	**# of Extensions:**	0
Letter Date:	Mar 27, 2017	**Received Date:**	Mar 29, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	AA-OW-Assistant Administrator - OW	**Signature Date:**	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	DRF - Recommendation of two regulations that should be candidates for regulatory reform under the President's January 30, 2017, "Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs"		
Instructions:	AA-OW-Prepare draft response for signature by the Assistant Administrator for OW		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Derek Threet - AO-IO OP - Office of Policy OPA - Office of Public Affairs		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 30, 2017	Apr 14, 2017	N/A
	Instruction: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

NATIONAL
RURAL WATER
ASSOCIATION
NRWA *America's Largest Utility Membership*
2915 S. 13th Street, Duncan, OK 73533
580.252.0629 | nrwa.org

March 27, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Pruitt:

On behalf of the National Rural Water Association (NRWA), we wish to congratulate you on your nomination to be Administrator of the United States Environmental Protection Agency (EPA). NRWA is the largest community-based water organization in the country. We are headquartered in Oklahoma and have over 31,000 small and rural community members (various forms of local governments). Our member communities have the very important public responsibility of complying with all applicable regulations and for supplying the public with safe drinking water and sanitation every second of every day.

On January 9, 2017, we wrote an introductory letter to offer our assistance in partnering with you to implement your agenda and to be a "rural resource" on drinking water safety, environmental protection, and quality wastewater service in rural and small town America.[1]

We are writing to you today to recommend two U.S. Environmental Protection Agency regulations that should be candidates for regulatory reform under the President's January 30, 2017, ***"Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs."***

First, federally mandated Tier 2 public notices issued under the Safe Drinking Water Act (CFR §141.203 Tier 2 Public Notice) should be eligible for e-reporting or other new and innovative methods for public distribution similar to public notices under EPA's January 3, 2013 policy for "CCR Rule Delivery Options." Adoption of this regulatory reform policy could save small and rural communities millions of dollars in public funding, provide more timely information to the public, and allow for enhanced availability of information to the public by archiving the disclosure material on the internet (as opposed to a one-time mailed notice). EPA's Safe Drinking Water Information System (SDWIS) fiscal year 2016 database lists over 30,000,000 persons in communities with Tier 2-type maximum contaminant level (MCL) or treatment technique (TT) violations with EPA drinking water rules.[2] A 2015 assessment by the Kansas Rural Water Association found that each Tier 2 public notice costs over $1 per customer (printing, copying and mailing).[3] U.S. Senator Roger Wicker inquired about such regulatory relief to the EPA on June 11, 2015; however, no such relief has been announced by EPA.[4]

Second, we urge you to modify the mandatory health effects information crafted by EPA as part of the mandatory public notices. Our concern is the current EPA information is unnecessarily alarming the public regarding the safety of their drinking water. Many violations of EPA standards are not necessarily an indication of unsafe drinking water (i.e. a temporary exceedance for a small fraction of a part per million that is causing the public to stop drinking their water and not trust their local government).

[1] www.ruralwater.org/Administrator_Pruitt.pdf
[2] http://ruralwater.org/tier2.jpg
[3] http://www.krwa.net/portals/krwa/lifeline/1503/018.pdf
[4] http://www.ruralwater.org/wicker.pdf

*The **National Rural Water Association** is the country's largest public drinking water and sanitation supply organization with over 31,000 members. Safe drinking water and sanitation are generally recognized as the most essential public health, public welfare, and civic necessities.*

For fiscal year 2014, EPA lists 2,135 maximum contaminant level (MCL) violations of DBPs standards. 477 of those exceedances include no recorded level; 110 of the 416 violations for the haloacetic acids standards (HAA5) are for exceedances equal to or less than 5 parts per billion (PPB); and 174 of the total 1,252 violations for total trihalomethanes standards (TTHMs) are for violations equal to or less than 5 PPB. It is our understanding that this category of DBP violations requires Tier 2 Public Notice (direct mailing of the violation to consumers with mandated alarming language specified by EPA) which often results in alarming the public to the point they are afraid to drink the water. For example, after a DBP violation of two thousandths (.002) of a part per million, the local news station in Menonimee, Michigan (WFRV, 4/3/2015) reported, *"Residents in Menominee, Michigan are Questioning the Safety of their Drinking Water... Last week, [a consumer] got a notice in the mail saying the Menominee city water system recently violated a drinking water standard. The supply tested high for trihalomethane, a disinfection by-product. 'It was kind of a slap in the face when I got this and I thought, here I'm paying for a commodity and I'm not really sure that it's safe,' explained [the consumer]. 'I don't think I'm the only one in the city that feels that way... I'm actually looking into getting a whole house water filtration system,' she added. 'I don't trust our water anymore...'"*

What the public wants to know most is whether there is a public health significant difference between 80 parts per billion and 82 parts per billion of THMs occurring in their water. Some states have been compelled to issue additional public notices to warn consumers of the significance of EPA mandated warnings (Kentucky Department for Environmental Protection, May 9, 2005).[5]

Thank you for your attention to these two immediate regulatory reform proposals. In the coming days, we will be cataloging the numerous regulatory reform proposals that we have previously submitted to the Agency for your consideration. We appreciate your consideration of these proposals and look forward to working with you on these and many other issues regarding EPA's water programs and regulations.

We urge the EPA to recognize that small and rural communities are a solution, not a problem, to improving public health and protecting the environment. Enhancing drinking water and wastewater quality in small communities is more of a resource issue than a regulatory problem. Most small community non-compliance with the Safe Drinking Water Act and Clean Water Act can be quickly remedied by on-site technical assistance and education. The current EPA regulatory structure is often misapplied to small and rural communities because every community wants to provide safe water and meet all drinking water standards. After all, local water supplies are operated and governed by people whose families drink the water every day and people who are locally elected.

In closing, we look forward to collaborating with you on efforts that improve drinking water safety and environmental protection in rural and small communities. Congratulations again on your nomination to serve the country as the next Administrator of the U.S. Environmental Protection Agency, and we wish you the very best.

Sincerely,

Sam Wade
Chief Executive Officer

cc: Peter Grevatt

[5] www.ruralwater.org/kydbps.pdf

*The **National Rural Water Association** is the country's largest public drinking water and sanitation supply organization with over 31,000 members. Safe drinking water and sanitation are generally recognized as the most essential public health, public welfare, and civic necessities.*

Correspondence Management System
Control Number: AX-17-000-6880
Printing Date: March 30, 2017 01:12:32

Citizen Information

Citizen/Originator: **Sandler, Jessica**
Organization: People for the Ethical Treatment of Animals
Address: 501 Front Street, Norfolk, VA 23510

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-6880	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	Apr 14, 2017	**# of Extensions:**	0
Letter Date:	Mar 30, 2017	**Received Date:**	Mar 30, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AA-OCSPP-Assistant Administrator - OCSPP	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Concern about the interpretation of the amended Toxic Substances Control Act
Instructions: AA-OCSPP-Prepare draft response for signature by the Assistant Administrator for OCSPP
Instruction Note: N/A
General Notes: N/A
CC: OPA - Office of Public Affairs
ORD - Office of Research and Development -- Immediate Office
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OCSPP	Mar 30, 2017	Apr 14, 2017	N/A
	Instruction: AA-OCSPP-Prepare draft response for signature by the Assistant Administrator for OCSPP				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS

Washington, D.C.
1536 16th St. N.W.
Washington, DC 20036
202-483-PETA

Los Angeles
2154 W. Sunset Blvd.
Los Angeles, CA 90026
323-644-PETA

Norfolk
501 Front St.
Norfolk, VA 23510
757-622-PETA

Oakland
554 Grand Ave.
Oakland, CA 94610
510-763-PETA

Info@peta.org
PETA.org

March 30, 2017

The Honorable Scott Pruitt
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

VIA USPS and email to: Pruitt.scott@EPA.gov

Dear Administrator Pruitt,

Congratulations on your recent appointment. People for the Ethical Treatment of Animals and our more than five million members and supporters are committed to using innovative, scientifically valid test methods that replace or reduce the use of animals, while providing information that better protects human health and the environment.

In 2016, Congress passed and the president signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act. This act amended the Toxic Substances Control Act (TSCA), received almost unanimous bipartisan support, and directed the Agency to reduce and replace the use of vertebrate animals in chemical testing.

Yet, in its January 17 procedural rule for prioritizing chemicals for risk evaluation under TSCA, the Office of Pollution Prevention and Toxics (OPPT) proposes a screening process that could require chemical manufacturers to conduct extensive toxicity testing – *before it even prioritizes chemicals for risk evaluation*. As noted in numerous public comments submitted, this "pre-prioritization" step, which our legislators never intended, would produce paralyzing uncertainty in the regulated community. Further, the Agency is proposing to initiate an entirely new screening process, rather than more fully adapting its 2014 work plan in which it identified 90 chemicals for further assessment. The Agency's resources would be more effectively used by prioritizing these already identified substances at a pace consistent with its ability to complete risk evaluations under TSCA.

While we are very concerned with OPPT's interpretation of the amended TSCA, we enthusiastically support initiatives of the Office of Research and Development, the National Center for Computational Toxicology (NCCT), the Office of Pesticide Programs (OPP), and OPPT that reduce animal use, and it is vital that the Agency allocate funds for their continued support. For example, the Agency's Toxicity Forecaster (ToxCast) initiative leads the world in developing

Affiliates:
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

automated, high-throughput technologies to screen thousands of chemicals rapidly, reliably, and cost-effectively. NCCT research also includes virtual tissues, advanced computer models capable of simulating how chemicals affect humans. OPP is implementing a process to fulfill its stated commitment to implement 21st century animal-free methods that can assess the toxicity of pesticides in less time, using fewer animals, reducing costs, and better ensuring the protection of human health and the environment.

Thank you for your attention to these matters.

Respectfully,

Jessica Sandler, MHS
Vice President for Regulatory Testing
tel: 757-622-7382, ext. 8001
email: JessicaS@peta.org

cc: Jeffery Morris, OPPT Director
Rusty Thomas, NCCT Director
Robert Kavlock, Ph.D., ORD Acting Assistant Administrator
Rick Keigwin, Jr., OPP Acting Director

Correspondence Management System
Control Number: AX-17-000-6905
Printing Date: March 30, 2017 03:19:40

Citizen Information

Citizen/Originator: **Williams, Emily Mantz**
Organization: U.S. Small Business Administration - Office of Advocacy
Address: 409 3rd Street, SW, MC 3114, Washington, DC 20416

Clark, Major D.
Organization: U.S. Small Business Administration - Office of Advocacy
Address: 409 3rd Street, SW, Washington, DC 20416

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-6905	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	Apr 14, 2017	**# of Extensions:**	0
Letter Date:	Mar 30, 2017	**Received Date:**	Mar 30, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	DX-Direct Reply	**Signature Date:**	N/A

File Code: 404-141-02-01_141_b Controlled and Major Corr. Record copy of the offices of Division Directors and other personnel.
Subject: DRF - Implementation of Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda"
Instructions: DX-Respond directly to this citizen's questions, statements, or concerns
Instruction Note: N/A
General Notes: N/A
CC: OCFO - OCFO -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OSDBU	Mar 30, 2017	Apr 14, 2017	N/A
	Instruction: DX-Respond directly to this citizen's questions, statements, or concerns				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

MEMORANDUM

TO: **Heads of Agencies**

FROM: **Major L. Clark, III Acting Chief Counsel for Advocacy, U.S. Small Business Administration**

DATE: **March 30, 2017**

SUBJECT: **Implementation of Executive Orders 13771, "Reducing Regulation and Controlling Regulatory Costs," and 13777, "Enforcing the Regulatory Reform Agenda"**

As required by Executive Order (EO) 13272[1], I am writing to advise you of the activities of the Office of Advocacy (Advocacy) related to recent Executive Orders on the reduction of regulatory burdens and offer additional assistance related to these new policies. Advocacy strongly endorses the principles and policies of these Executive Orders and urges that they be implemented consistent with the Regulatory Flexibility Act (RFA)[2] in order to reduce the regulatory burdens and the disproportionate impacts of regulations on small entities.

Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.[3] The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), gives small entities (businesses, organizations, and local governments) a voice in the federal rulemaking process and requires agencies to consider the impacts of their rulemakings on small entities. Under EO 13272, Advocacy provides training to agencies on the RFA.

Over the coming months, Advocacy will be making available additional assistance and tools to implement Executive Orders 13771 and 13777 and engaging in outreach to small entities to identify opportunities to reduce burdens on small entities. Advocacy will also be seeking additional opportunities to train policy officials and regulatory staff on the RFA and its importance in the implementation of these EOs.

[1] Executive Order 13272, signed August 13, 2002 (67 Fed. Reg. 53,461 (August 16, 2002). Section 2(a) requires the Chief Counsel for Advocacy to "notify agency heads from time to time of the requirements of the [Regulatory Flexibility] Act."

[2] 5 U.S.C. § 601, *et. seq.*

[3] 15 U.S.C. § 634a, *et. seq.*

SBA
OFFICE OF ADVOCACY
www.sba.gov/advocacy
409 3rd Street, SW / MC 3114 / Washington, DC 20416 / 202-205-6533 ph / 202-205-6928 fax
www.sba.gov/advocacy

To initiate Advocacy assistance to your agency in the implementation of EO 13771, EO 13777, and the Regulatory Flexibility Act, please provide me with the names of the officials you have designated as the Regulatory Policy Officer, named under EO 12866, section 6(a)(2), and the Regulatory Reform Officer, named under EO 13777, section 2(a).

This information should be sent to Charles Maresca, Director of Interagency Affairs, SBA Office of Advocacy, Charles.Maresca@sba.gov, as it is available. Please also contact me or Mr. Maresca if you have any questions about this memorandum or your agency's compliance with the RFA.

Thank you for your consideration of these requests. I look forward to a productive effort to reduce the regulatory burdens on small entities.

cc: Dominic Mancini, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

Correspondence Management System
Control Number: AX-17-000-6900
Printing Date: March 30, 2017 03:29:36

Citizen Information

Citizen/Originator: **Brimmer, Janette K.**
Organization: Earthjustice
Address: 705 Second Avenue, Seattle, WA 98104

Chavez, Jennifer C.
Organization: Earthjustice
Address: 705 Second Avenue, Seattle, WA 98104

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-6900	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	Apr 14, 2017	**# of Extensions:**	0
Letter Date:	Mar 24, 2017	**Received Date:**	Mar 30, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	AA-OW-Assistant Administrator - OW	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Waters of the United States; Potential Revisions to Clean Water Rule - Scientific and Technical Information to be Included in Administrative Record
Instructions: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Mar 30, 2017	Apr 14, 2017	N/A
	Instruction: AA-OW-Prepare draft response for signature by the Assistant Administrator for OW				

Supporting Information

Supporting Author: N/A

EARTHJUSTICE

March 24, 2017

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200Pennsylvania Avenue NW
Washington, D.C. 20460

Office of Water
U.S. Environmental Protection Agency
Michael Shapiro, Acting Asst. Administrator
Mail Code 4101M
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Office of Water
U.S. Environmental Protection Agency
Benita Best-Wong, Acting Principal Deputy
Asst. Administrator
Mail Code 4501T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Waters of the United States; Potential Revisions to Clean Water Rule--Scientific and Technical Information to be Included in Administrative Record

Dear Mr. Pruitt, Mr. Shapiro and Ms. Best-Wong:

This letter is submitted on behalf of Earthjustice, Sierra Club, and Puget Soundkeeper Alliance (the "Conservation Organizations"). On February 28, 2017, President Trump signed an Executive Order directing review and potential revision of the Waters of the United States Rule, 80 Fed. Reg. 37,054 (June 29, 2015) (hereafter the "Clean Water Rule"), instructing that such review and any revision must be in keeping with Justice Scalia's opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). In news stories that same day and shortly thereafter, Mr. Pruitt vowed to quickly withdraw the Clean Water Rule. Based upon the Executive Order and Mr. Pruitt's statements, the Conservation Organizations assume the directed review and likely withdrawal/revisions to the Clean Water Rule are occurring. This letter is to ensure that a number of scientific, technical, and legal matters are before, and considered by, the U.S. Environmental Protection Agency (the "Agency") and that they are included in the administrative record for the Agency's ultimate decision.

INTRODUCTION

The Federal Water Pollution Control Act (a/k/a the Clean Water Act) is one of our nation's most important and prescient environmental laws. Congress enacted the protections in the Federal Water Pollution Control Act at a time when news reports of horrific pollution incidents highlighted the fact that our waters were in trouble and we could not continue to allow their use as dumping grounds for pollutants without wreaking havoc on entire ecosystems and

NORTHWEST OFFICE 705 SECOND AVENUE, SUITE 203 SEATTLE, WA 98104
T: 206.343.7340 F: 206.343.1526 NWOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

jeopardizing our drinking water, food sources, commerce and recreation. To that end, Congress' stated purpose and intent was to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Congress did not say that only those waters navigable in fact or with a significant nexus would receive those protections. Rather, it defined "navigable waters" generally as "waters of the U.S." 33 U.S.C. § 1362. The Legislative History of the 1972 Federal Water Pollution Control Act further demonstrates that Congress intended broad application of the law and its jurisdictional reach in order to foster the critical protective and remedial purposes of the law. Statements from both House Members and Senators in policy and conference committees made clear that the term "navigable" as used in the Act was not intended to constrain the reach and jurisdiction of the Act to protect against and clean up pollution in all our nation's waters. Members pointedly stated that they were concerned that inclusion of the word "navigable" *not* be read as limiting the Act's application in any way. Rather, their stated intent was for the Federal Water Pollution Control Act to have as broad an application as possible to protect all waters of the U.S. Members noted that the intent was to move away from the constrained notions of jurisdiction, and, in particular, notions regarding navigation, in order to ensure that waters are protected in a full and comprehensive way. *See* A Legislative History of the Water Pollution Control Amendments of 1972 (Cong. Res. Serv.), at 178-79, 250-51, 327, 818, 1495.

Further, the Act is plainly a water pollution act, not a law about navigation (in any sense). The Army Corps of Engineers ("COE"), early in the life of the Federal Water Pollution Control Act, made an unsuccessful effort to impose strict navigation constraints on its obligations by construing its jurisdiction very narrowly under the new laws to match its jurisdiction under navigational laws such as the Rivers and Harbors Act of 1899. In *Natural Resources Def. Council v. Callaway*, 392 F. Supp. 685 (D.D.C. 1975), the court soundly rejected the COE's attempt finding that the Federal Water Pollution Control Act dictated a wider sweep in order to address pollutants to the nation's waters.

As EPA research and reporting repeatedly shows year after year, we still have a long way to go in applying the Clean Water Act and meeting its directives and, therefore, attempts to constrain application of the Clean Water Act will be extremely damaging to our nation's waters. Toxics are still discharged into our waters while agricultural discharges are almost wholly unregulated, account for almost half of the pollution entering waterways, and account for a very significant portion of the waters that are currently failing to meet basic standards of cleanliness (including the hypoxia problem in the Gulf and toxic algae blooms in lakes throughout the Midwest). *See, e.g.*, EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013) where EPA reports that for its 2008-09 study well over 50% of the waters assessed exhibited *poor* conditions and only 20% were classified as "good." The results by region were even more disappointing with 62% of the waters in the east classified as poor and 58% in the plains states. (Copy enclosed.)

EPA's summary of states' reported water quality data paints a similarly dismal and apparently worsening picture. States' reported data on EPA's website at https://ofmpub.epa.gov/waters10/attains_index.control#total_assessed_waters, (last visited March 22, 2017) show that states have an extremely poor record of assessing the quality of their

waters with rarely more than one-half of waters assessed and often a small fraction, despite this being an obligation for the last forty years. And, of the waters that states have assessed, 55% of rivers and streams, 71.7% of lakes, and 50% of bays/estuaries are *failing* to meet one or more water quality standards. (These numbers have worsened over the last several years—in 2014 states' reported data had 53% of rivers and streams and 68% of lakes failing to meet standards.) Some regions' numbers are even worse. For example, the Region 6 states (which include Texas and Oklahoma) have assessed only slightly more than 11% of their rivers and streams and of those they report that 60% of them fail to meet basic water quality standards. For lakes in Region 6, 51% have been assessed and over 65% of them are too dirty to meet standards. Data in Region 3 (which includes states such as West Virginia and Pennsylvania) show 37% of lakes have been assessed and 83% of them fail to meet standards. Region 9 (which includes California and Arizona) report that only 24% of rivers and streams have been assessed with 87% of them failing to meet standards, 39% of lakes have been assessed with 87% failing, and 5% of estuaries and bays have been assessed with 98% of those failing to meet basic standards of quality.

Discharges of pollutants into our nation's water have not been eliminated and in many respects are not even controlled. Lake Erie, once a ray of hope for positive change under the Act, has descended once again into a cesspool of algae blooms and dead fish due to unabated and increasing nutrient runoff from farms and development. *See* reporting regarding City of Toledo's closure of water supply due to toxic algal blooms and extent of toxic bloom for 2014, "Behind Toledo's Water Crisis, a Long-Troubled Lake Erie," NEW YORK TIMES, August 4, 2014; "Lake Erie's Algae Explosion Blamed on Farmers," CBC News, August 7, 2014. The City of Des Moines, Iowa has tried, unsuccessfully, to address the skyrocketing expense of removing nitrates from the city's drinking water that is coming from upstream pollution sources. http://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/03/22/lawsuits-real-losers-iowans-suffering-dirty-water/99501730/ (DES MOINES REGISTER, March 22, 2017).

The news is not better for wetlands, which are critical to groundwater recharge, controlling flooding, cleansing waters, and providing important habitat. Development and agriculture continue to decimate wetlands. In the latest comprehensive reports, agencies reported that we had lost over 50% of our wetlands nationwide; but in parts of the Midwest and coastal areas the figure is as high as 90% or more with attendant disastrous results for clean water. *See , e.g.,* EPA Wetland Status & Trends, water.epa.gov/type/wetlands/vital_status.cfm and (copy enclosed); Dahl, T.E., *Status & Trends of Wetlands in the Conterminus United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior, at 16 and 89-90 (2011) (copy enclosed). While the USFWS reports the *rate* of wetland loss has slowed, losses still outdistance gains as recently as 2009, the last year USFWS reported. *Id.* This holds true in USFWS' status and trends report for coastal wetland as well, where it is reported that the nation continues to suffer a net loss of coastal wetlands (copy enclosed). And even when wetland acres are not lost, they are often degraded, losing functions and values as wildlife habitat, natural flood control and natural water quality control. Development also continues to contribute to stormwater runoff and hugely-altered hydrographs and erosion by eliminating wetlands and natural riparian areas and covering the landscape with impervious surfaces, pouring toxic chemicals and fertilizer into natural

streams and triggering extreme erosion.[1] Plainly, the protections of the Federal Water Pollution Control Act are still needed on a broad scale as we are very far from reaching its goals and directives. The greatest and most sustainable Clean Water Act success stories are directly attributable to strict application of the Act's controls.

DOCUMENTS TO BE PLACED IN THE RECORD UNDERLYING THE AGENCY'S REVIEW AND ANY REVISION OR WITHDRAWAL OF THE CLEAN WATER RULE

As the Agency proceeds with its work under the direction of the Executive Order, it is critical that the Agency consider the wealth of information outlined above and already developed by the Agency and the COE in the years of study and in the development of the Clean Water Rule. In the work to develop the Clean Water Rule, the Agency and COE consulted with the nation's top scientists on topics such as hydrology, geology, stream morphology, wetlands, and aquatic biology. The Agency's and CEO's consultation with the scientists helped to ensure the broadest and best protections for waters of the U.S. in keeping with the Supreme Court's and many Circuit Court's direction to include waters in "significant nexus" with larger downstream rivers. This makes both scientific and legal sense in that waters are not static on the landscape, and to protect the waters of the U.S. requires an understanding and protection of all waters in connection with larger waters—chemically, physically, and biologically – as directed by Congress in the Act itself. The Conservation Organizations therefore refer you to, at a minimum, the documents referenced herein and below, and call upon you to ensure that they are part of the record of your actions under the Executive Order and any action taken to review, reconsider, withdraw, affirm, amend, or replace the Clean Water Rule. We enclose a copy of each of these documents with this letter for inclusion in the administrative record:[2]

A. EPA, *Nat'l Rivers and Streams Assessment* (Feb. 2013);

B. EPA, *Nat'l Rivers and Streams Assessment Technical Report* (Mar. 2016);

C. EPA, *Nat'l Rivers and Streams Assessment Fact Sheet*;

D. EPA, National Wetland Condition Assessment (2011);

E. Dahl T.E., *Status & Trends of Wetlands in the Coterminus United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2011);

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[1] It must also be noted that the proposed budget blueprint attacks funding for voluntary cleanup measures across the country, meaning that only through Clean Water Act regulation will improvements be made.

[2] The Conservation Organizations also assume that citations to the Agency's own databases and information reported by the states regarding status of waters, cited above, is part of the record for the actions described related to the Clean Water Rule.

F. Dahl T.E., *Status & Trends of Wetlands in the Coastal Watersheds of the Coterminus United States, 2004-2009, Report to Congress*, U.S. Dep't of Interior (2013);

G. EPA and COE, *Connectivity Report, preliminary for external review*, (2014);

H. EPA and COE, *Connectivity Report* (final) (Jan. 2015);

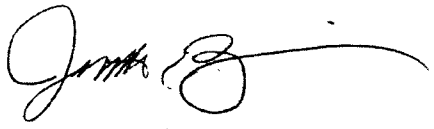
I. *Preliminary comments from individual members of the SAB Panel on Connectivity Report* (Aug. 2014);

J. *Letter from SAB to EPA on Connectivity Panel Activity and Report* (Sept. 2014); and

K. EPA, *Technical Support Document in Support of Clean Water Rule* (May 2015).

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,



Janette K. Brimmer
Jennifer Chavez
Earthjustice
And on behalf of Sierra Club and Puget Soundkeeper Alliance

Enclosures
cc: Aaron Isherwood, Sierra Club (w/o encls.)
Chris Wilke, Puget Soundkeeper Alliance (w/o encls.)

Message

From: Hope, Brian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C27B55619FB248CC8776FC46CD3F8B0D-BHOPE]
on behalf of EPAExecSec [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1176962B6AFD4C418B810260A53B5B75-EPAEXECSEC]
Sent: 4/14/2017 4:44:49 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Flynn, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=735bf2d12a064b0998510511c5b4644b-MFlynn]; Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]; Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]; Hale, Michelle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cb99f5247ab8412fa017133839301fee-Hale, Miche]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Greenwalt, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6c13775b8f424e90802669b87b135024-Greenwalt,]; Wagner, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=048236ab99bc4d5ea16c139b1b67719c-Wagner, Ken]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Freire, JP [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=11603dce40a1499e8e9c17eaed000ad1-Freire, Joh]; Hupp, Millan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=92cac7b684b64f90953b753a01bee0d5-Hupp, Milla]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Graham, Amy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26722dfde5b34925b0ad9a8dd4aff308-Graham, Amy]
CC: Gaines, Cynthia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dc475c0deb4c40e484affe48fef2f0fa-CGaines]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Fonseca, Silvina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d77d07be7386476380b9193170946863-Fonseca, Silvina]; Burden, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aca392a7aea849bfbce1fdbc1a1ed88e-Burden, Susan]; Threet, Derek [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76e1cc39e0fc4ecb937ae4b8be199973-Threet, Derek]; Leavy, Jacqueline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fe39fd985f4240f4be7b598ef13afef1-Leavy, Jacqueline]
Subject: Daily Reading File - April 14, 2017
Attachments: Daily Reading File.4.14.17.pdf

Correspondence Management System
Control Number: AX-17-000-7537
Printing Date: April 13, 2017 05:47:45

Citizen Information

Citizen/Originator: **Hilbert, John W.**
Organization: NanoManufacturing Association
Address: 1776 K Street, NW, Washington, DC 20006

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-7537	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	Apr 27, 2017	**# of Extensions:**	0
Letter Date:	Apr 13, 2017	**Received Date:**	Apr 13, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Subject: DRF - Trade association argues regulatory climate for use of nanoscale materials in commerce is unreasonable. Group asks the EPA Administrator to delay effective date of a regulation adopted January 11, 2017 requiring reporting of exposure and heath and safety information of nanoscale materials - chemical substances that have structures with dimensions at the nanocale.

Instructions: AD-Prepare draft response for the Administrator's signature

Instruction Note: N/A

General Notes: N/A

CC: OCHP - Office of Children's Health Protection
OECA - OECA -- Immediate Office
OGC - Office of General Counsel -- Immediate Office
OP - Office of Policy
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Anne Hargrove	OEX	OCSPP	Apr 13, 2017	Apr 27, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

NanoManufacturing Association

April 13, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Re: Request for Agency Stay of Rule Pending Guidance; Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements, 82 Fed. Reg. 3641 (January 12, 2017)

Dear Administrator Pruitt:

The Nanomanufacturing Association (NMA) is an alliance of private companies and trade associations established to advocate for a responsible and reasonable regulatory climate for U.S. products in which nanomaterials are used or are essential.[1] NMA respectfully requests that the U.S. Environmental Protection Agency (EPA) stay the effective date of the final rule entitled Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements (hereinafter the "Nanoscale Reporting Rule"), published in the Federal Register on January 12, 2017. NMA requests a meeting at your earliest convenience to discuss the need to stay this rule.

The final Nanoscale Reporting Rule indicated that EPA intends to issue guidance within six months of issuing the rule (by July 2017), which could be months after the May 12 effective date, and NMA requests that this rule be stayed at least until the guidance is issued. Issuing a stay of this rule is consistent with the Trump Administration's policy of reviewing previously issued regulations, as outlined in the January 20, 2017 Priebus Memorandum. That Memorandum instructed the heads of all executive agencies to extend the effective date for 60 days for rules that have been published in the Federal Register but not yet taken effect, which includes the Nanoscale Reporting Rule. Furthermore, a stay is necessary because NMA and its members are concerned that the Administration's April 5 guidance on implementing the January 30, 2017 Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (Executive Order (E.O.) 13771), which clarifies that "substantial guidance" is within its scope, will cause further delays in EPA issuing

[1] For more information, visit our website at: http://www.nanomanufacturingassociation.com/about-1.html

guidance on the Nanoscale Reporting Rule, which would leave companies in the dark about compliance with the rule for even longer.

NMA continues to have serious reservations with this rule, which was issued in the final days of the Obama Administration over numerous objections to the rule's lack of clarity in many key aspects. Unless the effective date is extended, companies will be forced to comply with reporting requirements that – by EPA's own admission – are not clear and warrant the issuance of further guidance.

While companies who are already on the market do not have to report until 2018, starting on May 12, 2017, new market entrants must submit detailed reports before they can commercialize a nanomaterial. This rule is expected to impact business development and will require greater control over product distribution.

By EPA's own estimate, over half of the companies faced with this reporting burden are small businesses. Processors that have never had to submit these types of reports under TSCA comprise another significant segment of the companies affected by the rule. It is unreasonable to require these companies to report before the promised guidance is issued. As consistently reflected in the public comments on this rulemaking, the agency has failed to provide industry with a clear understanding of the substances that are subject to reporting. For example, in response to industry requests to provide exemptions for low risk products such as polymers and pigments, EPA simply withdrew the exemptions it had proposed so that reporting is exclusively based on subjective concepts that are open to challenge by EPA and that will result in uneven reporting, such as company intent and whether the reportable substance contributes one or more "unique and novel" properties.

Delaying the effective date until July 2017 or later complies with the Administration's directive and provides the EPA with additional time to consider the substantial questions of law and policy this Rule raises, such as:

- May EPA ignore the statutory directive that warns against imposing duplicative reporting requirements on processors?

- Why does the wording of the final rule fail to carry out EPA's stated intent to let companies go to market as soon as these filings are made?

- Why did EPA create a permanent reporting regime unique for nanomaterials against the express directive of the *Policy Principles for the U.S. Decision-Making Concerning Regulation and Oversight of Applications of Nanotechnology and Nanomaterials* issued by the Office of Science and Technology Policy on June 9, 2011?

- Why do companies believe they have to test before making these reports, even though EPA stated it did not intend to require any new testing in this rule and does not have this authority in section 8(a) of TSCA?

- Why didn't EPA provide the public with an opportunity to comment on the definition of "unique and novel properties" that fundamentally underpins the need to submit reports under the rule, or fix other areas of definition ambiguity (e.g., reportable substances) identified by the public.

- Why does the rule use the same "small business" definition that EPA previously acknowledged is out-of-date, subjecting many small businesses who should not have to report to the notification requirements of the rule?[2]

NMA thinks this rule should be reviewed for consistency with the Administration's regulatory reform goals. We also believe the rule is a poorly designed and written regulation that would be a good candidate for rescission under Executive Order 13371. NMA asks that this rule be stayed until July 2017 or longer to provide EPA with time to examine this rule and consider whether its burdens are warranted. Please contact me with any questions you may have.

Respectfully Submitted,

John W. Hilbert III
NanoManufacturing Association
1776 K Street NW
Washington, DC 20006
jhilbert@khaconsultants.com

cc: Martha Marrapese, Counsel to NMA with Wiley Rein LLP
Michael Flynn, Acting Deputy Administrator, EPA
John Reeder, Acting Chief of Staff, EPA
Wendy Cleland-Hamnett, Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention (OCSPP)
Jeffrey Morris, Acting Director, Office of Pollution Prevention and Toxics (OPPT)
Maria Doa, Ph.D., Director, Chemical Control Division (CCD), OPPT
Raymond J. Alwood, CCD, OPPT

[2] Notice; Environmental Protection Agency; TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors, 81 Fed. Reg. 90840, 90842 (Dec. 15, 2016).

Correspondence Management System
Control Number: AX-17-000-7543
Printing Date: April 14, 2017 10:03:08

Citizen Information

Citizen/Originator: **Blardo, Carrie**
Organization: The Metropolitan District
Address: 555 Main Street, Hartford, CT 06103

Jellison, Scott
Organization: The Metropolitan District
Address: 555 Main Street, Hartford, CT 06103

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-7543	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 1, 2017	**# of Extensions:**	0
Letter Date:	Apr 14, 2017	**Received Date:**	Apr 14, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Regulatory Issues; Long Term Combined Sewer Overflow Control Plan
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCSPP - OCSPP - Immediate Office
OLEM - Office of Land and Emergency Management
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R1	Apr 14, 2017	May 1, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

MDC
The Metropolitan District
water supply · environmental services · geographic information

April 13, 2017

The Honorable Scott Pruitt
Administrator, United States Environmental Protection Agency
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

RE: EPA and Regulatory Issues / Long Term CSO Control Plan
The Metropolitan District of Hartford, Connecticut

Dear Administrator Pruitt:

I recently attended the 2017 Water Week activities in Washington, DC as part of my role as a member of the Board of Directors of The National Association of Clean Water Agencies (NACWA). While in Washington, I had the opportunity to meet with members of Congress and senior White House staff to discuss challenges we are facing at the Metropolitan District of Hartford, Connecticut and within the Water and Waste Water Utility Sector. In our meeting with the White House staff, we were strongly encouraged to write you and seek out an opportunity to work with you and your staff on these very important issues.

By way of background, The Metropolitan District of Hartford, Connecticut (MDC) is special Municipal Corporation chartered by the Connecticut General Assembly in 1929 and provides regional water, wastewater and household hazardous waste collection services to over 400,000 people in its 8 member municipalities: Bloomfield, East Hartford, Hartford, Newington, Rocky Hill, West Hartford, Wethersfield and Windsor.

The MDC also supplies treated water to portions of five additional towns: Glastonbury, South Windsor, Farmington, East Granby and Portland and operates four reservoirs in the Farmington River drainage basin. Colebrook River Lake Reservoir is a multipurpose water resource impoundment built for flood control, water supply, low flow augmentation and fishery enhancement. MDC also operates a hydroelectric power facility at the Colebrook River Dam. The West Branch Reservoir is owned by the MDC and used for river flow augmentation, recreational boating and fishing, hydroelectric power generation and is held in reserve for *future emergency drinking water supply.* Nepaug and Barkhamsted Reservoirs are the MDC's two principal drinking water sources and the largest surface water bodies in the state totaling 40 billion gallons of water storage.

The MDC also operates four water pollution control facilities, with its Hartford facility being the largest plant in the State with a capacity to soon process more than 200 million gallons of wastewater per day.

We are writing to you to bring to your attention several issues of mutual interest regarding our interactions with EPA and some of the challenges we face in our business. As a utility in a **"Delegated State"** MDC is not only impacted by EPA regulations but also must navigate the State of Connecticut's Department of Energy and Environmental Protection (DEEP) regulations which often tend to be more stringent that the EPA guidelines.

1. ***Speaking for the MDC municipalities, the Clean Water Act of 1974, although well intentioned, after 40 years of mandates, has become outdated and unaffordable. Utilities under violation must submit a Long-Term Control Plan (LTCP), and update it every 5 years, to outline how they are complying with, and intend to continue to comply with, various mandates. The real cause for separated Sanitary Sewer Overflows (SSO) or Combined Sewer Overflows (CSO) to the water ways of the USA has been predominately due to storm water infiltrating the sewer systems in one way or another. The recent regulation of Municipal Separated Sanitary Sewer Systems (MS4) proves this fact, now that regulators understand that storm water is the contributing factor to the sewer collection system's lack of capacity. The substantial impact of rehabilitation or replacement of aging infrastructure on both water and sewer systems, which are becoming a significantly increasing percentage of debt service on utilities' operational budgets, must be considered under the Affordability Guidelines set by EPA.***

   - As stewards of the environment, the Industry supports appropriate regulation which is reasonable and affordable. The NACWA Board is proposing/supporting a Bill on Affordability and a new concept of **Integrated** Long Term Control Planning recommending regulatory requirements to Congress and the Trump Administration. MDC has proposed this same Integrated Plan concept to Connecticut DEEP.

   - NACWA is also proposing to Congress to fund a low-income funding subsidy program. The EPA affordability formula is flawed, given the fact it does not allow for consideration of significantly differing median household incomes within any regional authorities' membered communities. **An Affordability Analysis should include a review of the methodology of calculating the 2% median household income for multiple towns in a District.** MDC, for example, includes the Capital City of Hartford, Connecticut, whose median household income is under $30,000; while neighboring West Hartford's median household income is more than $100,000. Under the affordability guidelines, everyone pays the same to comply with the mandates. Affordability is also impacted by the duration in which EPA and or the State mandates the violations be corrected. If longer durations where considered as part of an **Integrated** approach, it would be possible to achieve both goals of achieving an appropriate CSO/SSO level of control while improving the aging infrastructure at the same time.

   - Lessons learned since 2006 demonstrate that MDC has increased the capacity of its existing system simply by cleaning the collection system on a 30-month schedule. This should be the first step in any Consent Order or Decree to a community before regulators mandate similar $2.5 billion-dollar capacity improvements.

   - In general, EPA regional offices are extremely inconsistent regarding regulation enforcement, from PCB paints to the Air Emissions SSI rule and especially the Clean Water Act Design Level of Control for the CSO and SSO systems. Although EPA acknowledges **Integrated Planning** as part of their LTCP approvals, **"Delegated States"** like Connecticut do not. These differences in design standards represent billions of dollars in capacity improvements, which will not improve the existing sewer systems, but will only serve to create specific controls within the system (e.g.,

deep rock 20-foot diameter consolidation tunnels) to address a specific purpose of eliminating overflows to a water course. These mandated projects do not take into consideration the fact that 96% of the system - which in MDC's case represents 1400 miles of sewer piping that is on average 100 years old - is in urgent need of repair as well. **The financial bonding capacity of utilities like the MDC is being absorbed by the Clean Water Program regulation - leaving virtually no bonding capacity available for the next 30 years.** Aging sewer infrastructure needs must be considered and weighed as part of CSO compliance.

- It is our understanding Senators Borrasso (WY) – Chair, Committee on Environment and Public Works and Inhofe (OK) – Member, Committee on Environment and Public Works plan to introduce legislation to support **Integrated Planning and Affordability** for Long Term Control Planning. Both MDC and NACWA support these improvements.

2. ***The National Association of Clean Water Agencies (NACWA) submitted a petition to EPA requesting a stay and reconsideration of EPA's sewage sludge incinerator (SSI) rule.***

   - The financial and operational impacts of EPA's SSI rule on municipal clean water utilities will be substantial. While EPA estimated the national costs for compliance with the rule would be $55 million in capital expenditures, NACWA's estimates now suggest that the actual national capital costs for compliance could exceed $880 million. These dramatic cost increases are having immediate impacts on many utilities, with some already deciding to shut down their SSI units and seek other, more expensive methods to manage their sewage sludge.

   - For MDC, the direct impact of the SSI rule will be significant. The MDC's Hartford Water Pollution Control Facility (HWPCF) operates three multiple hearth SSI units. In order for MDC to achieve the rule's new emission limitation requirements, the MDC will be required to invest significant capital (approximately 5 million dollars) to research and install additional emissions controls. In addition, the new emission controls will increase the daily operations and maintenance costs. However, some of the new emission limits are so stringent, it is unknown if technology exists that could be implemented to the existing SSI units to meet those limits. Owners/operators of *brand new* incinerators being constructed reportedly have concerns they may not be able comply with these new elevated air emission limits. In Connecticut, there are not a lot of disposal options for sludge. Utilities will be forced to truck sludge out of state, at great expense, instead of utilizing the few SSI units that remain in the state.

3. ***MDC does not release stream flow water from our two primary drinking water reservoirs (Nepaug and Barkahmsted); however, the management of Colebrook River Lake Reservoir and the West Branch Reservoir includes a careful river release strategy through a complex assortment of historic riparian agreements, an Army Corps of Engineers flood control plan, Connecticut Department of Energy and (DEEP) fisheries releases and the Farmington River Wild and Scenic management plan through our Goodwin Dam. As mentioned earlier in this correspondence, MDC's West Branch Reservoir serves as future emergency drinking water supply. Again, although EPA does not regulate stream flow, as a Delegated State, the water industry in Connecticut is facing regulations which support releasing drinking water to rivers and streams for purposes of supporting aquatic life.***

   - With the *Stream Flow Standards and Regulations* as proposed by the DEEP, the MDC's ability to continue as a regional water supplier undoubtedly would be impacted.

- The DEEP fisheries division has indicated the brown trout species, which is not a native fish to CT or the USA, artificially stocked in the river system, needs up to 120 cfs (85 mgd) in order sustain natural spawning cycles during the 3rd week of October. During this year's drought condition, it was impossible to provide 50 cfs, let alone 120 cfs. The recorded natural flows in the river prior to the MDC's Goodwin Dam being constructed in 1960 were only 25 cfs, therefore the DEEP is trying to regulate streams in CT to an impossible standard.
- If lessons learned teach us anything, the DEEP stream flow regulations, as defined, are attempting to release precious drinking water at rates far below what the DEEP fisheries experts believe are necessary to support their own **non-native fisheries program**. It is extremely dangerous to release any available emergency drinking water until such time the rain fall replenishes our capacities above the drought trigger stages of supply.
- Drinking water dams are designed to *impound* water, not to *release* water. Water is only "released" when the reservoir is full and it spills over to the water course during rain events. Modifications to MDC's existing dams to control and monitor stream flow releases would exceed $30 million. There would also be increased operating expenses for reservoir operations and for the monitoring and reporting of stream flow releases.
- The Metropolitan District is already facing significant 4-billion-dollar asset management capital cost to replace and rehabilitate aging infrastructure such as pipelines, pump stations and dams. Much of this existing infrastructure is greater than or approaching 100 years of age, and **therefore should be considered as part of EPA's Affordability calculation under the Clean Water Act.**
- The ultimate goal of the Environmentalists is to utilize Class A/AA water for aquatic life and over time, thru development and population growth, leave no other option but to resort to utilizing class B water bodies for drinking water, like Flint, Michigan.

4. ***Regarding modifications to the Lead and Copper Rule, it is important to clarify the responsibility of the property owner vs. the Water Supplier; specifically, lead solder joints in private property. More importantly, 90% of lead levels exceedance in children is due to lead paint, and this is why lead paint was mandated by EPA and the State to be removed from property housing children during any renovations. Lead solder was required to be eliminated from use on potable water systems.***

   - The Lead-Based Paint Hazard Reduction Act of 1992, known as Title X (ten), is the source of much of the law on lead paint. It requires disclosures of known lead hazards at the time of the sale or lease of a home built before 1978. Sellers and landlords must also provide a pamphlet on lead poisoning to the buyer or renter prior to sale or rent.
   - The Act prohibits the "use of any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 1986, in the installation or repair of (i) any public water system; or (ii) any plumbing in a residential or non-residential facility providing water for human consumption, that is not lead free."
   - **Yet, lead solder on pipes in private property or major school rehabilitations are not mandated to be removed under any circumstances, unlike lead paint. Mary Hooker School in Hartford, CT just underwent a $40 million-dollar renovation. Recently they**

have experienced high levels of copper in their internal building plumbing water system and were required to utilize bottled water for a period.

- EPA pushing the responsibility to the water utility by changing the parameters for the Lead and Copper rule will only result in false positive exceedances. This will only make it impossible to comply with the regulation, which today MDC and many others have never violated. We need to discuss the implications of the false sense of security these changes will have on the public. Using "Flint, Michigan" as the example; making it the water utilities' responsibility to remove service pipes from private property due to lack of proper regulation, although potentially effective, is unrealistic, and presents a host of potential issues such as private property access, legal liability and insurance claims. Rather, private property owners should be held to the same regulations regarding lead in service pipes as they are with lead paint. Also, adding enough chemicals (orthophosphate) to the water to meet a new standard for lead will negatively affect overall water quality.

The following issue is only to apprise you of mounting risks to MDC's multibillion dollar investments in its infrastructure.

Following historic floods that devastated major portions of Hartford and East Hartford in 1936 and 1938, the U.S. Army Corps of Engineers began design and construction of a flood protection system along the banks of the Connecticut River. This system is the largest of its kind in New England, and represents one of the largest flood control systems on the East Coast. Although EPA has no oversight responsibility to the flood control systems, I feel it is important for the EPA to understand MDC has submitted a request for WRRDA funding for critical improvements to the Hartford and East Hartford flood control systems. The MDC is very interested in the well-being of the areas protected by these flood control systems, and in seeing that these areas remain safe from flooding now and in the future. In order to ensure the success of the MDC $2.5 Billion Dollar Clean Water Program, as well as the safety of Harford's central business district, the Cities of both Hartford and East Hartford, along with the Metropolitan District Commission, have jointly requesting $77,000,000 in federal funding as authorized by The Water Resources Reform and Development Act of 2014.

- Potential loss of integrity of the flood control systems is a threat not only to the MDC's existing infrastructure, but also to the significant capital investment being made as part of the Clean Water Program. This request for projects will not only enable the City's flood management control systems to meet federal standards to control storm water runoff and eliminate pollutant discharge into critical watersheds and waterways, it will also protect the $1.2 Billion of Federal and State investments in the largest regional wastewater treatment plant in CT which is protected by the dike systems. Failure of the dike system, independent of multiple months without wastewater service, will cost MDC towns more than $10B to reestablish operation to the plants.

- Given that the MDC's system is affected in many ways by the performance of the Hartford and East Hartford flood control systems, we believe it is the region's best interest to pursue funding to invest in these flood control systems. I hope your awareness can in some way support this WRRDA funding request given it is of such critical importance to the City of Hartford, Town of East Hartford, the MDC, and ultimately, protecting the EPA's investment in the region.

I apologize for the length of my letter; it isn't every day we are invited to address our concerns directly with the Administrator of the EPA, all of which affect the communities we serve. MDC and NACWA are

committed to protecting the environment and public health while also being responsible financial stewards of our ratepayers' resources. We believe that the Industries' recommendations to the present legislation are both necessary and appropriate.

We would be honored to have any opportunity to meet and/or discuss these, or other, issues with you or your staff. Congratulations on your appointment, and we look forward to working with you in the years to come.

Thank you,

Scott W. Jellison, P.E.
Chief Executive Officer
The Metropolitan District

CC: Justin Clark, Director, Office of Intergovernmental Affairs, The White House
William Kirkland, Deputy Director, Office of Intergovernmental Affairs, The White House
William DiBella, Chairman, MDC
R. Bartley Halloran, District Counsel, MDC
Steven Bonafonte, Assistant District Counsel, MDC
Adam Krantz, CEO, NACWA

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Citizen Information

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File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Final Chlorpyrifos, Diazinon, and Malathion Biological Evaluations Released on January 18, 2017
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: OPA - Office of Public Affairs
ORD - Office of Research and Development -- Immediate Office
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

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Jacqueline Leavy	OEX	OCSPP	Apr 14, 2017	May 1, 2017	N/A
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Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

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April 13, 2017

David B. Weinberg
202.719.7102
DWeinberg@wileyrein.com

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: "Final" EPA Chlorpyrifos, Diazinon, and Malathion Biological Evaluations Released on January 18, 2017

Dear Mr. Administrator:

We are writing on behalf of our clients Dow AgroSciences, LLC ("DAS"), Makhteshim Agan of North America, Inc., d/b/a ADAMA ("ADAMA"), and FMC Corporation ("FMC") (together, the "OP Registrants"), to request that you withdraw from the Fish and Wildlife Service ("FWS") and National Marine Fisheries Service ("NMFS") (jointly, "the Services") three Biological Evaluations ("BEs") that the Environmental Protection Agency ("EPA") transmitted to them on January 18, 2017.

Our clients and their affiliates hold EPA registrations for products containing one or more of the organophosphate ("OP") pesticide active ingredients that are the subject of the BEs: chlorpyrifos, diazinon, and malathion.

Our clients are unclear about the Administration's intentions related to the ongoing controversy regarding the intersection between pesticide registration activities under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and activities of EPA and the Services under the Endangered Species Act ("ESA"). We would welcome the opportunity to discuss that issue with you. However, our clients' immediate concern is with the fundamental scientific unsoundness of the OP BEs.

The BEs purportedly were prepared in accordance with the "Interim Approaches" to FIFRA-ESA issues adopted by the Obama Administration in November, 2013.[1] Our clients believe that the Interim Approaches are

[1] Interim Approaches for National-Level Pesticide Endangered Species Act Assessments Based on the Recommendations of the National Academy of Sciences April 2013 Report, *available at* https://www.epa.gov/sites/production/files/2015-07/documents/interagency.pdf.

fundamentally flawed and should be set aside. Each client filed substantial comments on drafts of the BEs that were released for public review in April, 2016. Those comments document our clients' views. Yet EPA conceded in its response to these comments that it did not address most of them in the final versions of the BEs.

Reviews of those "final" BEs, enclosed with this letter, confirm this fact. It also demonstrates that the Agency did not correctly apply processes described in the Interim Approaches. Below are what our clients consider some of the most egregious examples of these shortcomings of the BEs:

- A major lack of transparency necessary for evaluation and reproduction of results.
- Inclusion of proposed and candidate species that are not afforded protection under the ESA.
- Many studies selected by EPA as sources of information on effects and exposure were not evaluated for data quality and relevance. When evaluated, many evaluations did not follow EPA's own study quality criteria. In addition, many scientifically valid, registrant-submitted studies were not evaluated by the Agency, with no explanation. This is contrary to EPA's own guidance and the recommendations made by the National Academy of Sciences.
- Effects determinations were made assuming that product may be applied anywhere in the United States, without consideration of distinctions between use patterns, timing of applications, locations of use, and presence of listed species and critical habitats.
- Compounding of conservatism in the assessment of exposure, resulting in unrealistically high and sometimes physically impossible estimates.
- Failure to consider appropriate lines of evidence, as recommended by the National Academy of Sciences, to determine the likelihood of an effect occurring.

EPA's submission of the BEs in their current form is improper in light of both these facts and the many other critical comments EPA has received from the

OP Registrants, farmers, agriculture organizations, public health officials, professional pest control applicators, and others.

Furthermore, in failing to "explain or support several assumptions critical to its conclusions," EPA violated the Fourth Circuit Court of Appeals' direction that an agency acting to implement the ESA must explain its analysis "with sufficient clarity" to allow stakeholders to determine whether the analysis is "the product of reasoned decisionmaking." *Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv.*, 707 F.3d 462, 464, 475 (4th Cir. 2013). For example, EPA relied on several data sets that it does not dispute are incomplete and/or inaccessible. But it never "cogently explain[ed] why." *Id.* at 473.

EPA sought to excuse its failure to properly revise the drafts or otherwise respond to comments by asserting that the revisions were precluded by a legal obligation to complete biological opinions based upon the BEs by December 31, 2017.[2] That position is incorrect. EPA is not bound by any such obligation.

EPA presumably based its assertion on stipulations entered in court cases by NMFS and FWS. The one of those stipulations to which NMFS was a party did commit NMFS to complete a nationwide OP biological opinion by December 31, 2017. Stipulation and Order to Amend the Stipulated Settlement Agreement Affirmed by this Court on August 1, 2008, *NW Coalition for Alternatives to Pesticides, et al. v. National Marine Fisheries Service*, No. 07-cv-01791 (W.D. Wash., May 21, 2014) ("*NCAP v. NMFS*"), Dkt. No. 50, at 6. But a party to a settlement agreement may request, by motion, that the court modify the settlement agreement for any "reason that justifies relief." Fed. R. Civ. P. 60. Thus, rather than issue flawed BEs, EPA could have asked NMFS to file a motion to modify the *NCAP v. NMFS* settlement agreement deadline so EPA could adequately fulfill its own statutory obligations.[3] Our clients believe there is significant documentation to support a deadline change.

---

[2] Office of Chemical Safety and Pollution Prevention's Response to Comments on the Draft Biological Evaluations for Chlorpyrifos, Diazinon, and Malathion, at 2 (Jan. 17, 2017), *available at* https://www3.epa.gov/pesticides/nas/final/response-to-comments.pdf.

[3] FWS entered into an analogous stipulation in *Center for Biological Diversity v. U.S. Fish and Wildlife Service et al.* *See* Stipulation Amending Original Stipulated Settlement and Order, No. 11-cv-5108 (N.D. Cal., July 28, 2014), Dkt. No. 87 ("Amended Stipulated Settlement"). But that stipulation expressly states that FWS "is not obligated to" complete OP consultations by December

Finally, EPA compounded its error by taking the position that it would not revisit these BEs even while acknowledging their shortcomings. EPA cannot dodge its ESA statutory obligation to rely on the "best scientific and commercial data available."[4] At this point, EPA should withdraw the BEs from the Services and leave it to NMFS to address the existing settlement agreement deadline.

We recently have written to Secretaries Ross and Zinke asking that they similarly direct NMFS and FWS, respectively, to return the BEs to EPA and halt any work on preparation of biological opinions based on them, but urge that you not await their actions before withdrawing the BEs.

Thank you for your prompt attention to this request.

Sincerely,

David B. Weinberg

Counsel to Dow AgroSciences, LLC; Makhteshim Agan of North America, Inc., d/b/a "ADAMA"; and FMC Corporation

Enclosures

31, 2017, and it provides that if there were to be a delay the parties would meet and confer to discuss appropriate actions and, if necessary, petition the Court to resolve any dispute. Amended Stipulated Settlement at 4-5.

[4] ESA Section 7(a)(2), 16 U.S.C. § 1536(a)(2).

cc (without attachments except as indicated):

The Honorable Ryan Zinke, Secretary of the United States Department of the Interior
The Honorable Wilbur Ross, Secretary of the United States Department of Commerce
The Honorable Michael Young, Acting Deputy Secretary of the United States Department of Agriculture
The Honorable Jim Kurth, Acting Director of the Fish and Wildlife Service (with attachments)
The Honorable Samuel D. Rauch, III, Acting Assistant Administrator for the National Marine Fisheries Service
The Honorable John Barrasso, Chairman, Senate EPW Committee
The Honorable Tom Carper, Ranking Member, Senate EPW Committee
The Honorable Rob Bishop, Chairman, House Committee on Natural Resources
The Honorable Raul Grijalva, Ranking Member, House Committee on Natural Resources
The Honorable Pat Roberts, Chairman, Senate Committee on Agriculture, Nutrition and Forestry
The Honorable Debbie Stabenow, Ranking Member, Senate Committee on Agriculture, Nutrition and Forestry
The Honorable Michael Conaway, Chairman, House Committee on Agriculture
The Honorable Collin Peterson, Ranking Member, House Committee on Agriculture
Dr. Sheryl H. Kunickis, Director, Office of Pest Management Policy, United States Department of Agriculture
Mr. Ray Starling, Special Assistant to the President for Agriculture, Trade and Food Assistance (with attachments)
Mr. Richard Keigwin, EPA OPP (with attachments)
Mr. George Oliver, DAS
Ms. Laura Phelps, ADAMA
Mr. Paul Whatling, FMC

STUDY TITLE

Response to EPA's Final Biological Evaluation for Chlorpyrifos

TEST GUIDELINES

OCSPP 835.SUPP and OCSPP 850.SUPP

AUTHOR(S)

Yvonne Clemow, Michael Winchell, Katie Hill, Sara Rodney, Hendrik Rathjens, Colleen Priest, and R. Scott Teed

STUDY COMPLETION DATE

April 11, 2017

STUDY SPONSOR

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LABORATORY STUDY ID

Intrinsik Project Number 60-60650
Dow AgroSciences Study ID 170772

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CC: Kristien Knapp - AO-IO
OP - Office of Policy
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

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History

Action By	Office	Action	Date

Date: Thu Apr 13 16:57:20 EDT 2017
From: Hope.Brian@epamail.epa.gov
To: CMS.OEX@epamail.epa.gov
Subject: FW: Clean Tech Boosts our Economy

DRF

-----Original Message-----
From: Paul Chapman [Ex.6
Sent: Thursday, April 13, 2017 2:40 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Re: Clean Tech Boosts our Economy

Dear Mr. Pruitt,

The attached report from a bi-partisan group led by Hank Paulsen and Michael Bloomberg makes the strong case that a clean tech economy is vital for economic development. Please align EPA policy with the clear evidence we have before us and restore the full EPA budget.

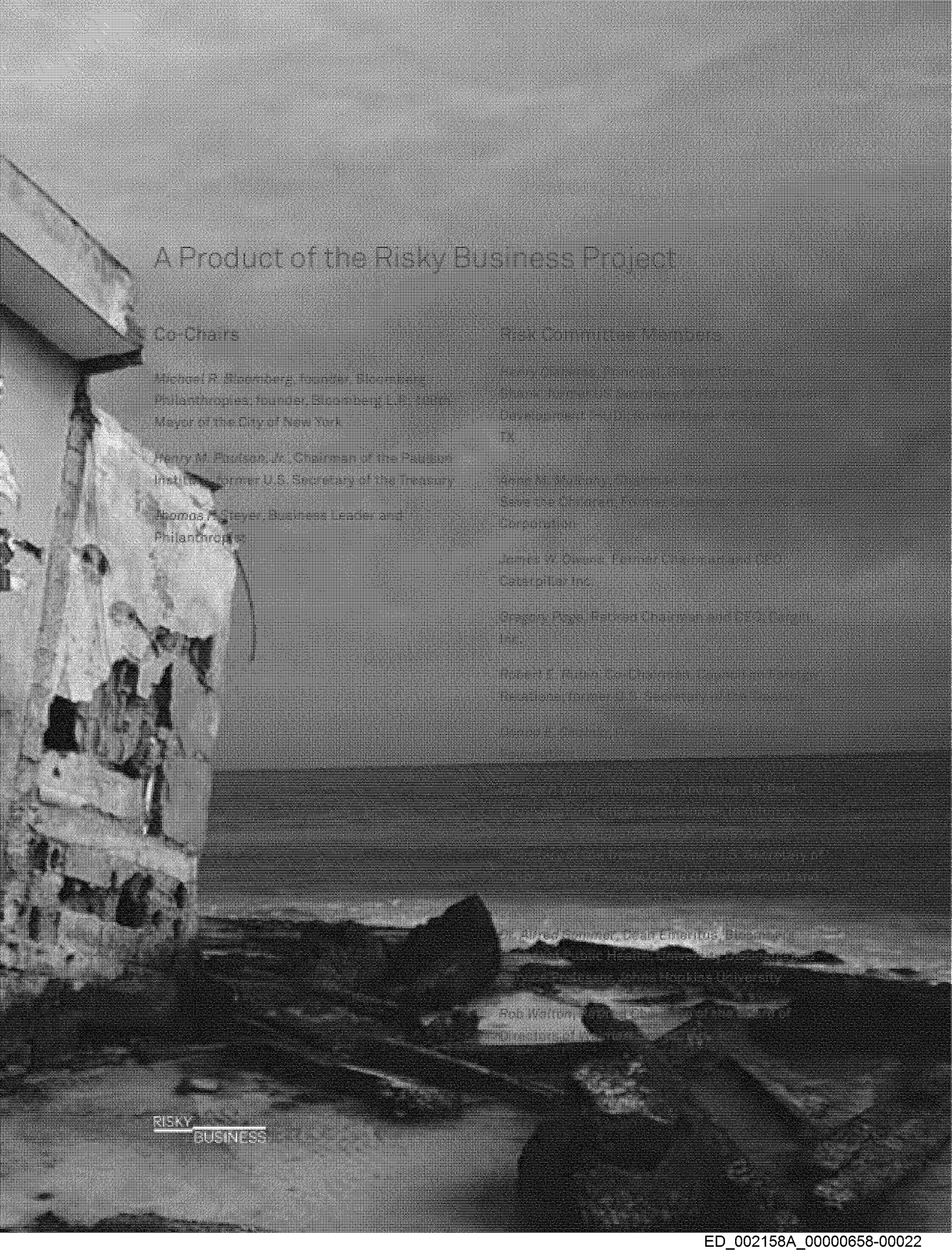
Best regards,

Paul Chapman

Inverness Associates

Ex.6


Home Risk
investment



Executive Summary

In our 2014 inaugural report, "Risky Business: The Economic Risks of Climate Change in the United States," we found that the economic risks from unmitigated climate change to American businesses and long-term investors are large and unacceptable. Subsequent scientific data and analysis have reinforced and strengthened that conclusion. As a result, we, the Co-Chairs and Risk Committee of the Risky Business Project, are united in recognizing the need to respond to the risk climate change poses to the American economy.

Now we turn to the obvious next question: *how* to respond to those risks. Seriously addressing climate change requires reducing greenhouse gas emissions by at least 80 percent by 2050 in the U.S. and across all major economies. We find that this goal is technically and economically achievable using commercial or near-commercial technology. Most important, we find that meeting the goal does not require an energy miracle or unprecedented spending.

The transition to a cleaner energy economy rests on three pillars: moving from fossil fuels to electricity wherever possible, generating electricity with low or zero carbon emissions, and using energy much more efficiently. This means building new sources of zero- and low-carbon energy, including wind, solar, and nuclear; electrifying vehicles, heating systems, and many other products and processes; and investing in making buildings, appliances, and manufacturing more energy efficient.

Meeting these targets requires a large-scale shift away from ongoing spending on fossil fuels and toward up-front capital investments in clean energy technologies. Many of those, such as wind and solar, have little or no fuel cost once built. Given an appropriate policy framework, we expect these investments to be made largely by the private sector and consumers, and to yield significant returns. Because of the large capital investments and the long-term savings in fuel costs, this shift presents significant opportunities for many American investors and businesses. Notably, shifting the U.S. to a low-carbon, clean energy system presents not just long term benefits but also immediate, near-term opportunities, particularly for those actors best positioned to capitalize on these trends.

Our Modeling

Our conclusions are based on a sophisticated energy, economic and infrastructure planning model that compares scenarios through 2050. Each of the four pathways we modeled would achieve an 80 percent reduction in carbon emissions by 2050, and would do one of the following:[1]

- Rely heavily on renewable energy;
- Significantly expand reliance on nuclear power;
- Include a substantial amount of fossil fuel power plants with carbon capture and storage; or
- Generate electricity from a relatively even mix of these three zero- and low-carbon resources (the Mixed Resources pathway).

Each pathway also assumes a different combination of transportation fuels (electricity, biofuels, and fossil fuels).

For each of these pathways, we modeled changes in nationwide and sectoral energy use, electricity use, fuel use, carbon emissions, and investment. We do not endorse any specific pathway.

1 Our modeling was limited to carbon emissions (CO_2) which represent 81 percent of total U.S. GHG emissions. We did not model pathways that would achieve the needed reductions in the other greenhouse gases (methane, nitrous oxide, and fluorinated gases).

Capital Investment Needs

Under our Mixed Resources pathway, we found that the total additional capital investment necessary to cut carbon emissions 80 percent economy-wide by 2050 would be[2]:

- $220 billion per year from 2020 to 2030
- $410 billion per year between 2030 and 2040
- $360 billion per year between 2040 and 2050

These capital investments would significantly reduce fuel costs, with the savings growing every decade. The savings would be[3]:

- $70 billion per year from 2020 to 2030
- $370 billion per year from 2030 to 2040
- $700 billion per year from 2040 to 2050

The largest additional investments would be in power generation ($55 billion per year); advanced

2 Results presented here are decadal averages for the Mixed Resources pathway that incorporates a variety of low-carbon energy sources, one of four pathways analyzed. All modeling results are expressed in 2014 dollars unless otherwise noted.

3 Fuel savings are based on a U.S. government "business-as-usual" projection of fossil fuel prices in which: oil prices are $79/bbl in 2020, escalating an average of 3.4% per year out to 2050; natural gas prices are $5/Mbtu in 2020, escalating at an average of 2.7% per year out to 2050; and coal prices are $1.9/Mbtu in 2020, escalating at an average of 1.4% per year out to 2050. The analysis also explores a scenario in which a global shift to clean energy results in lower fossil fuel prices as demand decreases.

Figure ES-1.

Average Annual Additional Capital Investments and Fuel Expenditures by Decade

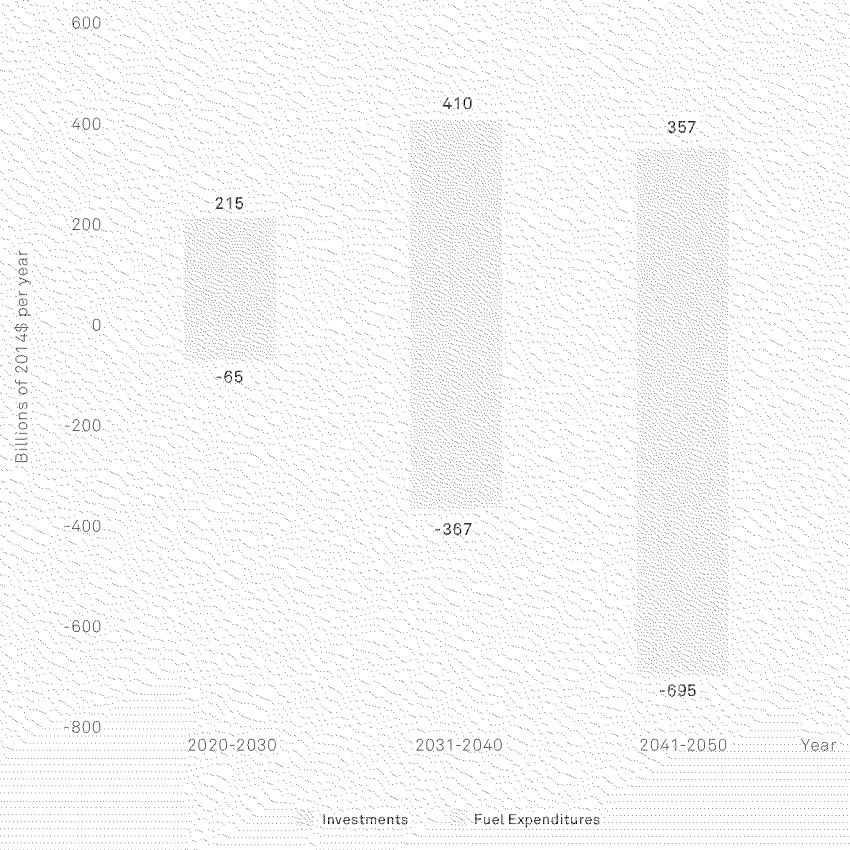


Figure ES-1 depicts the annual changes (from reference case levels) in investments and fuel expenditures averaged over three decadal periods for the Mixed Resources pathway.

biofuels ($45 billion per year); purchases of advanced light duty vehicles ($75 billion per year); and energy efficiency measures ($16 billion per year). Businesses that become leaders in these sectors could see large increases in revenue in the years ahead, while those that lag behind risk being left with stranded assets.

The investment needs of a transition to a clean energy economy are manageable, especially when compared to the costs that would be imposed by unmitigated climate change and continued fossil fuel dependence. They are also comparable to other recent investments, such as in unconventional oil and gas production, and in computers and software. Those investments have transformed the American economy, yielding huge returns to those businesses that led in the development of new technologies and products.

Regional and Sectoral Impacts

Investment needs and business opportunities will vary considerably by region. For example, in our Mixed Resources pathway, new nuclear plants would likely be built in the mid-Atlantic and southern regions, while wind power would grow fastest in the windy central region, investments in solar power would be greatest in the sunny western and southern regions, and revenue from biomass feedstocks would be greatest in the Midwest.

Overall, the increased investment would boost manufacturing and construction across the U.S. Roughly 460,000 additional construction jobs could be created by 2030, with the number rising to 800,000 by 2050. At the same time, reductions in fossil fuel use would further constrain coal, oil, and natural gas exploration and production. The number of coal mining and oil- and gas-related jobs could decline by more than 130,000 by 2030 and 270,000 by 2050, disproportionately affecting the specific geographic regions that currently depend heavily on these industries.

We know innovation will continue as American businesses develop and deploy new technologies. Many economic sectors and communities will also respond to the challenges and opportunities presented by the transition to a clean energy economy in new and surprising ways. We can project how the costs of current technologies are likely to decline as they are developed and deployed, but we can't predict which new technologies will emerge in the next 35 years—though we're confident new innovations will be made. The costs of creating a clean energy economy are thus likely to be lower—and the benefits greater—than we project.

Critical Role of Policy

The private sector alone cannot solve the climate change problem. We know from our collective business and investment experience that the private sector will take action at the necessary speed and scale *only* if it is given a clear and consistent policy and regulatory framework. That framework must send a clear, consistent, and long-term market signal on the necessity of climate action, provide incentives for innovation and deployment of clean energy systems, and help society adapt to climate impacts that are inevitable due to past and current emissions.

We are united in believing that the real costs of carbon emissions must be incorporated into economic decision-making in both the public and private sector, for instance, through putting a price on carbon. Government investment must also be coordinated and streamlined—and must

not subsidize or exacerbate climate-related risks and economic activities that contribute to climate change (e.g., tax incentives for fossil fuel extraction or subsidized flood insurance in high-risk areas). Policies should also help those Americans hurt by the clean energy transition, as well as those who are most vulnerable to climate impacts.

America has a responsibility to lead by example. Ultimately, however, U.S. actions must be integrated into a larger global commitment to shift toward a cleaner energy economy. U.S. policies also must ensure that the competitiveness of U.S. business is not harmed. This may require border adjustments and other mechanisms to prevent other countries from seizing unfair advantages.

With the right policy framework, we are confident that America can reduce the economic risks from climate change while seizing new market opportunities. But businesses must also start now to factor climate risks into their investment decisions. Whenever capital assets reach the end of their productive lives, they should be replaced with energy efficient and low-carbon alternatives wherever possible and prudent. All businesses, especially those making regular long-term, place-based infrastructure and supply chain investments, should also conduct detailed analyses of climate risks they face, build internal capacity, develop concrete action plans to address these risks, and disclose their risks and actions.

The transition to a clean energy economy is already underway, but must be accelerated to avoid unacceptable risks from climate change. In the past, transformative investments in such areas as highways, rural electricity, and telecommunications have unleashed the power of innovation and American business. Investing in clean energy can ensure American economic security and competitiveness for decades to come. But to substantially reduce the growing risks of climate change, and to take maximum advantage of the opportunities in a clean energy economy, we must act now.

Correspondence Management System
Control Number: AX-17-000-7531
Printing Date: April 14, 2017 08:54:22

Citizen Information

Citizen/Originator: **Sullivan, Daniel S.**
Organization: Grand River Dam Authority
Address: P.O. Box 409, Vinita, OK 74301-0409

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-7531	**Alternate Number:**	1Z906W580198142857
Status:	For Your Information	**Closed Date:**	N/A
Due Date:	N/A	**# of Extensions:**	0
Letter Date:	Apr 11, 2017	**Received Date:**	Apr 13, 2017
Addressee:	James Richard Perry	**Addressee Org:**	USDOE
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	SNR-Signature Not Required	**Signature Date:**	N/A

File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs
R6 - Region 6 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Jacqueline Leavy	OEX	OAR	Apr 14, 2017

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Forward control to OAR	Apr 14, 2017

Comments

PUBLIC VERSION

GRDA
Grand River Dam Authority

April 11, 2017

The Honorable James Richard Perry
Secretary of Energy
United States Department of Energy
U.S. Department of Energy
1000 Independence Ave, SW
Washington, DC 20585

Re: Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act

Dear Secretary Perry:

The Grand River Dam Authority ("GRDA"), an agency of the State of Oklahoma, hereby notifies the Department of Energy ("DOE" or "Department") of an imminent shortage of generation resources in its service area that constitutes an emergency within the meaning of Section 202(c) of the Federal Power Act ("FPA")[1] and requests that the Department invoke its emergency authority pursuant to Section 202(c) to alleviate such emergency.

This spring, because of a confluence of events that will result in the unavailability of all generation at GRDA's principal generating facility, the Grand River Energy Center ("GREC"), GRDA will face an unexpected shortage of electric generation resources to address the reactive power needs of its service area. Specifically, from April 16, 2017 to July 15, 2017 (referred to herein as the "Emergency Period"), none of the GREC's three generating units will be online due to: (i) the required closure of Unit No. 1 on April 15, 2017, pursuant to an Administrative Order issued by the Environmental Protection Agency ("EPA"); (ii) a lightning strike that seriously damaged Unit No. 2 on July 1, 2016, rendering it inoperable until August 2017; and (iii) unforeseen delays in the construction of a new generating unit (Unit No. 3) because of key supplier delays in the fabrication of essential project materials due to the August 2016 floods in Louisiana.

Without at least one of these three generating units available to generate electricity to provide reactive power needed for grid reliability during the Emergency Period, GRDA will be unable to meet the reactive power needs of its service area during any low-load, high voltage conditions that occur (hereinafter, GRDA refers to this shortage of available reactive power resources during the Emergency Period as the "Emergency"). This Emergency will require Southwest Power Pool, Inc. ("SPP"), the Reliability Coordinator for GRDA's service area, to reconfigure the transmission system to mitigate the high voltage conditions by opening high voltage transmission lines. This method to address high voltage conditions on the transmission system is not as robust an engineering solution as the ability to operate a generator to provide

[1] 16 U.S.C. § 824a(c).

☐ ADMINISTRATION PO Box 409, Vinita OK 74301-0409 918-256-5545, 918-256-5289 Fax
☐ COAL-FIRED COMPLEX PO Box 609, Chouteau OK 74337 918-824-1074, 918-825-7791 Fax
☐ ECOSYSTEMS & EDUCATION CENTER PO Box 70, Langley OK 74350-0070 918-782-4726, 918-782-4723 Fax
☐ ENGINEERING & TECHNOLOGY CENTER 9933 E. 16th Street, Tulsa OK 74128 918-622-2228
☐ ENERGY CONTROL CENTER ROBERT S. KERR DAM PO Box 772, Locust Grove OK 74352 918-479-5249, 918-825-1935 Fax
☐ GRDA POLICE PO Box 70, Langley OK 74350, 918-782-4726, 918-782-4723 Fax
☐ OKLAHOMA CITY 201 NW 63rd St. Suite 305 Oklahoma City OK 73116 405-297-9963, 405-290-7631 Fax
☐ PENSACOLA DAM PO Box 70, Langley OK 74350, 918-782-3382 Also Fax
☐ SALINA PUMPED STORAGE PROJECT PO Box 609, Salina OK 74365 918-434-5920 Also Fax
☐ TRANSMISSION HEADQUARTERS PO Box 1128, Pryor OK 74362 918-825-0280, 918-825-9416 Fax

dynamic reactive power control; opening a transmission line offers only a static solution that poses more reliability risk to the system and does not follow good utility practice to keep the system intact.

Accordingly, GRDA hereby submits this application pursuant to FPA § 202(c) and Subpart W of Part 205 of the Department's regulations[2] for an emergency order to provide reactive power from Unit No. 1 of the GREC from April 16, 2017 to July 15, 2017 consistent with the conditions herein, in the event that Southwest Power Pool, Inc. ("SPP") determines that such generation is needed to maintain grid reliability. As explained below, GRDA is requesting that SPP have the ability to call on Unit No. 1, which would otherwise be offline but available (using natural gas igniters if necessary), only if SPP sees a need for Unit No. 1 to run to address reliability concerns relating to overvoltage conditions.

I. BACKGROUND

GRDA is an agency of the State of Oklahoma, primarily serving public power communities in Oklahoma. Approximately 70 percent of GRDA's total electric energy is generated by the Grand River Energy Center, which is located near Chouteau, Oklahoma. GREC Units No. 1 and 2 are coal-fired generating units (with natural gas-fired igniters), with generating capacities of 490 and 520 megawatts (MW), respectively.

Due in part to EPA's Mercury and Air Toxics Standards (MATS) requirements, which would have required substantial upgrades for Unit No. 1, GRDA determined to retire Unit No. 1 and to construct a new, lower-emitting, natural gas-fired generation unit (Unit No. 3). GRDA is currently in the process of constructing Unit No. 3, which is a highly efficient 495 MW natural gas combined cycle unit. When GRDA commenced construction of Unit No. 3, it was projected to come online in May 2017. To maintain grid reliability during Unit No. 3's construction, EPA issued an Administrative Order ("AO") granting GRDA a one-year extension of the compliance deadline for Unit No. 1 to comply with EPA's MATS requirements. The AO, attached hereto as Attachment A, requires Unit No. 1 to cease operation as a coal-fired unit on April 15, 2017.[3] The AO, issued under Section 113(a)(4) of the Clean Air Act, is nonrenewable.

As GRDA's principal electric generating station, the GREC plays a critical role in meeting all aspects of GRDA's electric load and in providing ancillary services, including reactive power. In particular, Unit No. 1 has traditionally played a key role in generating reactive power to provide local voltage support in GRDA's service area, particularly when Unit No. 2 has been out of service.

In 2014, SPP on six occasions requested either additional capacitive or reactive voltage support from Unit No. 1 to address voltage problems on the transmission system. During a planned maintenance outage of GREC Unit No. 2 for the period October 15, 2014 through November 4, 2014, SPP created a Temporary Operating Guide for Unit No. 1 requiring it to be

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[2] 10 C.F.R. Part 205, Subpart W (2016).

[3] Attachment A also includes an Amendment to the AO to account for increased reliance on Unit No. 1 after the lightning strike at Unit No. 2.

available for dispatch during instances of low load and high voltage. The Operating Guide, attached as Attachment B, stated that "[d]ue to the low load and high voltage in the GRDA area, GRDA Unit #1 generation will be needed. Generation needs to be online in order to ensure voltage stability until GRDA Unit #2 returns from outage."[4] Unit No. 1 was in fact called upon by SPP to provide reactive support during a substantial portion of the period Unit No. 2 was on outage. GRDA's transmission system, along with the conditions that give rise to the need to maintain the availability of Unit No. 1 to address low load, high voltage conditions, have not changed materially since SPP issued the Temporary Operating Guide.

II. APPLICATION FOR EMERGENCY ORDER

As explained below, GRDA requests that DOE determine that an emergency exists within the meaning of FPA § 202(c) with respect to the unavailability of Unit No. 1 during the Emergency Period, and order GRDA to run Unit No. 1 for the purpose of providing reactive power during the Emergency Period in the event that neither Unit No. 2 nor Unit No. 3 is online, and SPP determines that reactive power from Unit No. 1 is needed for purposes of grid reliability.

A. An Emergency Exists Because a Lightning Strike at Unit No. 2, and Unforeseeable Construction Delays at Unit No. 3, Will Leave GRDA Without the Ability to Generate Electricity for Reactive Power During the Emergency Period.

FPA § 202(c) provides that if "an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes" DOE may issue an order requiring the temporary connections of facilities, and such generation, delivery, interchange, or transmission of electric energy as it deems appropriate to best meet the emergency and serve the public interest. DOE's regulations provide additional detail about what constitutes an "emergency" for purposes of Section 202(c) at 10 C.F.R. § 205.371:

> "Emergency" . . . is defined as an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power. Such events may be the result of weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected "entity" to prevent. An emergency also can result from . . . a regulatory action which prohibits the use of certain electric power supply facilities. Actions under this authority are envisioned as meeting a specific inadequate power supply situation. Extended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency as contemplated in these regulations. . . .

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[4] *See* SPP Temporary Operating Guide, "GRDA Unit #1 Manual Commitment," Attachment B.

The unavailability of Units No. 1, 2, and 3 at the GREC during the Emergency Period constitutes an emergency within the meaning of Section 202(c) and DOE's regulations. First, without the availability of at least one of these three generating units at the GREC, GRDA will be unable to provide reactive power for local voltage support to maintain grid stability in GRDA's service area in low load, high voltage conditions. In the past, Unit Nos. 1 and 2 have traditionally met GRDA's needs for reactive power. However, these generating units will be offline during the Emergency Period, and Unit No. 3 will still be under construction and therefore not yet online. GRDA has no other means to procure or provide adequate reactive power for local voltage support in its service area during the Emergency Period. GRDA does not own, or have control over, other resources that can provide sufficient reactive power in GRDA's service area to provide adequate voltage support under low load, high voltage conditions. GRDA cannot rely on temporary generation to produce the needed reactive power because of the quantity of potential reactive power that might be needed under low load, high voltage conditions. (For instance, SPP called upon Unit No. 1 to provide more than 100 MVars of reactive power in 2016 under low load, high voltage conditions.)

Further, SPP's ability to address the reactive power needs of GRDA's service area without Unit No. 1 is limited and inadequate. SPP has the ability to reduce reactive power needs during the Emergency Period through reconfiguring its transmission system by opening transmission lines. However, this is not an optimal solution, because it would not allow SPP to maintain its system in an intact state consistent with good utility practice. Opening transmission lines is a less reliable means of addressing reactive power needs than through dynamic reactive power generation resources because of the relative reliability risk it poses: reactive power cannot be controlled as easily through system configuration as it can through dynamic resources to respond to unexpected events, and the system is more vulnerable to outages because the system is not intact. Thus, SPP's ability to address reactive power needs in GRDA's service area without Unit No. 1 is a limited and less robust method to ensure reliability.

Second, this shortage of resources to generate reactive power during the Emergency Period was unexpected and unforeseeable by GRDA, which originally expected to have Unit No. 2 available, and Unit No. 3 coming online, during the Emergency Period. However, Unit No. 2 sustained extensive damage on July 1, 2016 from a fire caused by a lightning strike, which took Unit No. 2 offline. Repairs to Unit No. 2 are ongoing and will not be completed until August 2017. This lightning strike causing the fire at Unit No. 2 was an unforeseeable act of God, the effects of which were not within the power of GRDA to prevent.[5] Likewise, Unit No. 3's commercial operation date has been delayed because of another unforeseeable act of God – the Louisiana floods of August 2016 – which delayed the ability of a key supplier to meet contractual commitments for critical materials for Unit No. 3's construction. Although GRDA planned for the shutdown of Unit No. 1 due to EPA's AO, DOE's regulations note that an emergency can result from "a regulatory action which prohibits the use of certain electric power supply facilities."[6] Collectively, the unavailability of the GREC's three generating units, each for different reasons, over the Emergency Period gives rise to a "shortage of facilities for

[5] 10 C.F.R. § 205.371.
[6] 10 C.F.R. § 205.371.

generating electric energy" within the meaning of Section 202(c) of the FPA for GRDA's service area.

B. GRDA's Shortage of Reactive Power Resources During the Emergency Period Will Imperil Grid Reliability

During low load, high voltage conditions, an inability to provide sufficient reactive power for voltage support can imperil grid reliability by allowing the grid to exceed the range of acceptable system voltage.[7] The inability to schedule sufficient reactive power can constitute a reliability standards violation, because under NERC Reliability Standard VAR-001-4.1 (Voltage and Reactive Control), transmission operators "shall schedule sufficient reactive resources to regulate voltage levels under normal and Contingency conditions."[8] A deficiency of reactive power can lead to disruption of service, because transmission facilities operating at voltages in excess of system voltage limits must be disconnected from other elements of the grid.[9] If transmission facilities operating at excessive voltages are not disconnected, the overvoltages can cause electric arcing due to insulation "flash overs," which can in turn result in physical damage to transmission facilities.[10]

GRDA's impending shortage of reactive power resources increases the risk of service disruption to GRDA's customers due to overvoltage, because the only means SPP will have to address reactive power needs is through reconfiguring the transmission system by opening a transmission line – a step that will mean the system is no longer intact. Good utility practice calls for the system to be maintained intact if possible. Without an intact system, GRDA's system will be more vulnerable to disruption of service or outages as a result of unexpected events. SPP recognized the risks presented by a lack of reactive power resources at the GREC in 2014 when Unit No. 2 was on outage by issuing its Temporary Operating Guide for Unit No. 1. SPP has reaffirmed the importance of maintaining Unit No. 1 beyond April 15, 2017 for mitigation of system voltage issues and local grid reliability in a letter of support for this request, attached hereto as Attachment C.

C. GRDA Provides Power to Significant Regions in Oklahoma, Including Customers of National Significance

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7 At low levels of electric system load, energized transmission lines may act as a capacitive load that increases system voltage.

8 NERC Reliability Standard VAR-001-4.1 (Voltage and Reactive Control), R1 ("Each Transmission Operator shall schedule sufficient reactive resources to regulate voltage levels under normal and Contingency conditions. Transmission Operators can provide sufficient reactive resources through various means including, but not limited to, reactive generation scheduling, transmission line and reactive resource switching, and using controllable load.").

9 *See* Reliability Standard TOP-008-1 (Response to Transmission Limit Violations), R3 ("The Transmission Operator shall disconnect [an] affected facility if the overload on a transmission facility or abnormal voltage or reactive condition persists and equipment is endangered.").

10 FERC Reliability Primer at 25 ("[H]igh voltages can exceed the insulation capabilities of equipment and cause dangerous electric arcs known as "flashovers." These conditions can occur when there is light loading on the system (e.g., less customer demand), causing an excess of reactive power that elevates the voltage beyond safe operating limits.").

GRDA provides electric power on its transmission system to both retail and wholesale customers. GRDA provides retail electric service to 80 industrial and commercial customers, most of which are located in the MidAmerica Industrial Park (MAIP) near Pryor. [redacted] The 9,000 acre MAIP is home to over 80 companies employing over 4,500 people. There are also urgent care, emergency and life flight services within the MAIP boundaries. On the wholesale side, GRDA's largest customer is Western Farmers Electric Cooperative (WFEC) which is responsible for supplying power to [redacted] 18 member Oklahoma distribution cooperatives. GRDA provides power directly to over 16 municipalities, including [redacted] Coffeyville, Kansas, which has a strong industrial base, and the City of Stillwater, which is primarily residential and commercial service. There are 15 hospitals with a combined 1000+ bed-capacity in these cities. GRDA also provides electricity to the Oklahoma Municipal Power Authority (OMPA). Through support of OMPA, GRDA's generation provides a portion of the electric power to an additional 35 participating cities in Oklahoma. Directly and indirectly, GRDA provides electric power support to some portion of 75 of the Oklahoma's 77 counties.

D. Information Required By Section 205.373

Herein, GRDA sets forth the information required under Section 205.373 of DOE's regulations.[11] To ensure that DOE has the information it needs to evaluate GRDA's application, GRDA is providing certain additional information that GRDA deems salient to its application.

(a) Legal Name of Applicant. The applicant is Grand River Dam Authority.

(b) Person to Whom Correspondence Should Be Addressed. Correspondence with respect to this application should be directed to:

Daniel S. Sullivan
Chief Executive Officer
Grand River Dam Authority
P.O. Box 409
Vinita OK 74301-0409
(918)256-5545
dsullivan@grda.com

[11] Certain elements of Section 205.373 address the circumstances of an applicant facing a shortage of real power and the prospect of firm customer curtailment, but do not address GRDA's emergency circumstances, which involve a shortage of reactive power generation during light load conditions. GRDA has indicated where these requirements are Section 205.373 are not applicable to GRDA's circumstances.

(c) Political Subdivision in Which GRDA Operates and Business Conducted. GRDA operates in 24 counties in Northeast Oklahoma. GRDA sells electricity to three customer classes in its service area: municipals, electric cooperatives and industries.

(d) Baseline Data.

(1) Daily peak load and energy requirements for each of the past 30 days, and projections for each day of the Emergency Period: These requirements are not applicable to GRDA's request, which contemplates relief in light load conditions. GRDA is providing information about the reactive power provided by Unit No. 1 in February 2017, the most recent month for which data is available, in Attachment D. GRDA provided reactive power pursuant to an SPP Temporary Operating Guide in the fall of 2014 period to maintain grid reliability. GRDA is providing data on the reactive power provided by Unit No. 1 during this time frame in Attachment E.

(2) All capacity and energy receipts or deliveries to other electric utilities for each of the past 30 days: Not applicable.

(3) The status of all interruptible customers for each of the past 30 days, and anticipated status during the Emergency Period: GRDA does not expect to interrupt any customers during the Emergency Period due to a lack of available energy. Interrupting load during the Emergency Period would exacerbate, rather than remedy, the low load, high voltage conditions that present an emergency for GRDA.

(4) All scheduled capacity and energy receipts or deliveries to other electric utilities during the Emergency Period. Not applicable.

(e) **A description of the emergency situation, any contingency plan of GRDA, and the current level of implementation.** The emergency situation GRDA faces is described above in Section II.A of this Application. Until GRDA can bring GREC Unit No. 2 or No. 3 online, GRDA does not have any contingency plan to provide reactive power for voltage support without Unit No. 1. As explained above in Section II.B, SPP's ability to address GRDA reactive power needs in low-load, high voltage conditions without Unit No. 1 is limited and poses increased reliability risks for GRDA's service area compared to operating Unit No. 1 for voltage support.

(f) **A showing that adequate electric service to firm customers cannot be maintained without additional power transfers.** Not applicable.

(g) **A description of any conservation or load reduction actions that have been implemented.** Not applicable. Reducing load via conservation or other load reduction actions under low load, high voltage circumstances would exacerbate, rather than mitigate, emergency overvoltage conditions.

(h) **A description of efforts made to obtain additional power through voluntary means and the results of such efforts.** GRDA does not have the ability to provide additional

reactive power resources to alleviate the Emergency. GRDA is required to cease operation of Unit No. 1 as a coal-fired unit after April 15, 2017 pursuant to an Administrative Order under Section 113(a)(4) of the Clean Air Act. An order issued under Section 113(a)(4) is nonrenewable, and therefore, EPA does not have authority to extend the compliance deadline in the AO and further delay compliance with MATS for Unit No. 1. Unit No. 2 is undergoing repairs as quickly as possible, but the unit will not be available during the Emergency Period. Construction on Unit No. 3 is not expected to be completed until sometime in June 2017, at the earliest, and may not be available at all during the Emergency Period.

(i) **A listing of proposed sources and amounts of power necessary from each source to alleviate the emergency and a listing of any other "entities" that may be directly affected by the requested order.** The only generation source that GRDA proposes to alleviate the Emergency is Unit No. 1 of the GREC. Based on historical data, GRDA expects that it could be called upon to absorb up to 120 MVar or more from the grid if called on by SPP for local voltage support in low load, high voltage conditions.

Two entities would be directly affected by GRDA's requested order. First, SPP manages grid operations for GRDA's transmission assets, and thus would be directly responsible for addressing any grid instability resulting from the Emergency. If DOE grants GRDA's request for relief herein, SPP would be able to dispatch Unit No. 1 to absorb reactive power if it determines that such generation is necessary to maintain grid reliability. Second, EPA would be directly affected, because running Unit No. 1 after April 15, 2017, would contravene the terms of EPA's AO and the Clean Air Act, which require GRDA to cease coal-fired operations at Unit No. 1 after April 15, 2017.

(j) **Specific proposals to compensate the supplying "entities" for the emergency services requested and to compensate any transmitting "entities" for services necessary to deliver such power.** GRDA proposes that, during the Emergency Period, it be compensated for any generation from Unit No. 1 directed by SPP pursuant to a DOE Section 202(c) Order consistent with the terms of the SPP Tariff.

(k) **A showing that, to the best of the applicant's knowledge, the requested relief will not unreasonably impair the reliability of any "entity" directly affected by the requested order to render adequate service to its customers.** To GRDA's knowledge, ordering reactive power generation from Unit No. 1, which is currently an SPP generating resource, will not impair the reliability of any entity.

(l) **Description of the facilities to be used to transfer the requested emergency service to the applicant's system.** Not applicable.

(m) **A general or key map on a scale not greater than 100 kilometers to the centimeter showing, in separate colors, the territory serviced by each "entity" named in the application; the location of the facilities to be used for the generation and transmission of the requested emergency service; and all connection points between systems.** This information is at attached as Attachment F.

(n) An estimate of the construction costs of any proposed temporary facilities and a statement estimating the expected operation and maintenance costs on an annualized basis. Not applicable

(o) Supplemental Information. A letter from SPP in support of GRDA's request for action under FPA Section 202(c) is attached as Attachment C.

E. Compliance with Applicable Environmental Laws Under Section 202(c)(2).

Section 202(c)(2) of the FPA provides that when DOE issues an order under Section 202(c) that results in a conflict with Federal, State, or local environmental law, DOE is required to ensure that the order requires generation, delivery, interchange, or transmission of electric energy only during hours necessary to meet the emergency and serve the public interest, and, to the maximum extent practicable, is consistent with applicable Federal, State, or local environmental law and minimizes any adverse environmental impacts.[12] Herein, GRDA is requesting authorization to generate electricity to provide reactive power support from Unit No. 1 of the GREC after April 15, 2017, which would contravene EPA's Administrative Order on MATS Compliance for Unit No. 1.[13]

To ensure compliance with the AO to the maximum extent possible and minimize environmental impacts pursuant to Section 202(c)(2), GRDA commits that, in the event DOE issues a Section 202(c) order directing the generation of reactive power from Unit No. 1 of the GREC, GRDA will generate from Unit No. 1 only when called upon by SPP pursuant to DOE's order, and will otherwise keep Unit No. 1 offline. Although Unit No. 1 must burn coal to generate reactive power, GRDA Unit No. 1 has natural gas igniters available to keep Unit No. 1 in a ready state, if necessary. This will ensure compliance with EPA's AO to the maximum extent possible given that the AO does not prohibit the use of natural gas at Unit No. 1. Because GRDA can keep Unit No. 1 ready, Unit No. 1 does not need to maintain a minimum generation level or be synchronized to the grid to be ready to respond if called upon by SPP to provide reactive power. Unit No. 1 can be brought online to generate reactive power from an offline state within 24 hours, which is within the window of notice that SPP would give GRDA to generate reactive power.

Additionally, GRDA commits to cease all generation from Unit No. 1 as soon as GREC Unit No. 3 or Unit No. 2 is brought online, in which case either unit would be able to act as a reactive power resource for GRDA.

F. Request for Designation of Critical Electrical Infrastructure Information

Pursuant to Section 215A of the FPA, GRDA requests that the Department designate the bracketed information in Section II.C as critical electrical infrastructure information protected

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[12] 16 U.S.C. § 824a(c)(2).

[13] *See* Attachment A at P 31.

from disclosure under the Freedom of Information Act and other public disclosure laws.[14] The bracketed information includes information relating to the production, generation, and transmission of energy that could be useful to a person in planning an attack on critical infrastructure.[15]

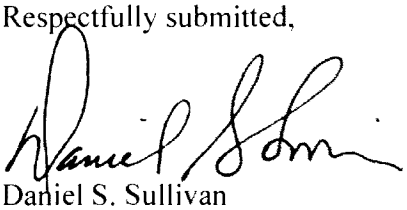
G. Requested Order

As explained herein, GRDA respectfully requests that DOE issue an emergency order directing the generation of electricity to provide reactive power from Unit No. 1 of the GREC from April 16, 2017 to (i) July 15, 2017, or (ii) the date on which GREC No. 3 or No. 2 is brought online, whichever is earlier, in the event that Southwest Power Pool, Inc. ("SPP") determines that generation from Unit No. 1 is needed to maintain grid reliability, subject to the requirements that Unit No. 1 remain offline unless requested to generate by SPP pursuant to a DOE Section 202(c) order.

III. CONCLUSION

GRDA respectfully requests that DOE take the emergency action requested herein as soon as possible to address the imminent shortage of reactive power that GRDA faces in its service area. GRDA stands ready to answer any questions that DOE may have, and to provide any additional information that DOE requires.

Respectfully submitted,



Daniel S. Sullivan
Chief Executive Officer
Grand River Dam Authority

Cc: Patricia A. Hoffman, Principal Deputy Assistant Secretary and Acting Assistant Secretary, DOE Office of Electricity Delivery & Energy Reliability

Attachments

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[14] 16 U.S.C. § 824a(c)(2).

[15] *See* 18 C.F.R. § 388.113(d)(1)(i). GRDA requests the bracketed information be designated critical electric infrastructure information for as long as permissible. *See* 18 C.F.R. § 388.113(d)(1)(ii).

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of April, 2017, caused copies of the foregoing documents to be served on the parties listed below by causing copies of the same to be sent via overnight delivery.

Michael Bardee
Director, Office of Electric Reliability
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Mail code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Southwest Power Pool, Inc.
c/o Lanny Nickell, Vice President, Engineering
415 North McKinley Street, Suite 140
Little Rock, AR 72205

Ronald W. Ciesiel
General Manager
Southwest Power Pool Regional Entity
201 Worthen Drive
Little Rock, AR 72223

/s/ Nathan Reese
Nathan Reese
Assistant General Counsel
Grand River Dam Authority

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Gunasekara, Mandy
Sent: Sat 11/4/2017 8:51:25 PM
Subject: Fwd: recruitment of OP presenter for Dec 12 CAAAC
Dec 2017 meeting agenda_v4.docx
ATT00001.htm

Would you be interested in presenting as well at the CAAAC meeting on the 12th? See additional notes below.

Sent from my iPhone

Begin forwarded message:

From: "Dunham, Sarah" <Dunham.Sarah@epa.gov>
Date: November 3, 2017 at 10:17:22 AM EDT
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Lewis, Josh" <Lewis.Josh@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Subject: recruitment of OP presenter for Dec 12 CAAAC

Hi Mandy—
I think I mentioned this to you last week, and you offered to reach out to OP to ask if they'd be willing to speak at the Clean Air Act Advisory Committee meeting on dec 12 (in addition to your session). We've drafted a suggested note for you I send to Brittany (or Samantha) if you would like to handle the invitation that way. (As opposed to just asking her in person!).

Hi Brittany-

OAR has an upcoming meeting of our Federal Advisory Committee, the Clean Air Act Advisory Committee. We are hoping someone from OP would be willing to present at a session on the recent Executive Orders. The draft agenda is attached and below is more information about the CAAAC and what is expected of the panel we would like OP to participate in. Please let me know if you or one of your staff can participate.

Thanks.

The Clean Air Act Advisory Committee (CAAAC) is a senior-level, multi-stakeholder committee established in 1990 to advise EPA on policy and program issues related to implementing the Clean Air Act Amendments of 1990. The next meeting of the CAAAC is Tuesday December 12, 2017. The committee is made up of 37 members representing various industries, state/local/tribal governments, environmental and public health groups, unions, and academia. This will be the first time the committee has met in 2017. Meetings are open to the public and generally covered by the trade press.

The current draft agenda (copy attached) includes a 90-minute session on the key Executive Orders and Presidential Memoranda that are significant for Clean Air Act programs. There are 3 parts to the proposed session:

1. First, someone from OP would summarize the order/memorandum and the status of EPA's work in response on Executive Orders 13783 (Energy), 13771 (Two-for-One rulemakings), and 13777 (Regulatory Reform) as well as the Presidential memorandum on permitting. (approximately 30 minutes).

2. Then, 3 CAAAC members representing 3 different types of organizations (e.g. one industry, one state/local/tribal, and one environmental/health) would make 5-minute prepared remarks on the topic. These members would be identified ahead of time, and given some information about the content of the presentation so they have a few days to think about and prepare their remarks (approximately 15-20 minutes)
3. The last part would be a broad CAAAC-wide discussion and Q and A. The EPA presenter does not need to formally respond to any CAAAC member comments, but should be prepared to answer questions about status of current and, to the extent the information is public, future activities. (approximately 40 minutes)

To: Wheeler, Andrew[wheeler.andrew@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Harlow, David[harlow.david@epa.gov]; Bowman, Liz[Bowman.Liz@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; White, Elizabeth[white.elizabeth@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Leopold, Matt[Leopold.Matt@epa.gov]; Henigin, Mary[Henigin.Mary@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Hope, Brian[Hope.Brian@epa.gov]; Johnson, Laura-S[Johnson.Laura-S@epa.gov]; Lovell, Will (William)[lovell.william@epa.gov]; Wright, Rhonda[Wright.Rhonda@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Maguire, Kelly[Maguire.Kelly@epa.gov]
From: Fonseca, Silvina
Sent: Tue 4/24/2018 8:37:46 PM
Subject: Signed: Three Proposed Rules NESHAP RTR (Friction Materials Manufacturing Facilities and Surface Coating of Wood Building Products) and Revision to the Regulatory Definition of VOCs - Exclusion of cis-1,1,1,4,4,4-hexafluorobut-2-ene
Signed Proposed Rule NESHAP RTR for Surface Coating of Wood Building Products 4.23.2018.pdf
Signed Proposed Rule NESHAP RTR Friction Materials Manufacturing Facilities 4.23.2018 .pdf
Signed Proposed Rule Rev of Reg Definition of VOC 4.23.2018.pdf

Good afternoon,

Yesterday, the Administrator signed the following three proposed rules:

1. Amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Friction Materials Manufacturing Facilities source category. The proposed amendments address the results of the residual risk and technology reviews (RTRs) conducted under the CAA. The proposed amendments also address the startup, shutdown, and malfunction (SSM) provisions of the rule and update the reporting and recordkeeping requirements. *The signed proposed rule is attached, signature can be found on page 68.*

2. Amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Surface Coating of Wood Building Products to address the results of the residual risk and technology review (RTRs) conducted under the CAA. EPA finds the risks due to emissions of air toxics from this source category under the current standards to be acceptable and that standards provide an ample margin of safety to protect public health. Therefore, EPA is not proposing to revise the numerical emissions limits to reduce residual risk. Additionally, EPA did not identify any new cost-effective controls under the technology review. Therefore, EPA is not proposing to revise the emissions standards as the result of the technology review. However, EPA is proposing to: add an alternative compliance demonstration equation; to amend provisions addressing periods of startup, shutdown and malfunction (SSM); to amend provisions regarding electronic reporting; and to make technical and editorial changes. The EPA is proposing these amendments to improve the effectiveness of the rule. This action also proposes a new EPA test method to measure isocyanate compounds in certain surface coatings. *The signed proposed rule is attached, signature can be found on page 93.*

3. Revise the regulatory definition of volatile organic compounds (VOC) under the CAA. The action proposes to add *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz-Z; CAS number 692-49-9) to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone (3) formation. *The signed proposed rule is attached, signature can be found on page 25.*

Please contact me if you have any questions.

Thank you!

Silvina Fonseca
Special Assistant
Office of the Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1955
Personal Phone / Ex. 6

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Lorraine Gershman
Sent: Tue 5/16/2017 2:47:45 PM
Subject: RE: Follow up on NSPS DD: Grain Elevators
NSPS DD Letter to Dravis Regulatory Reform FINAL 5-15-17.pdf
NOPA Reg Reform FINAL 05.15.17.pdf

Samantha,

As a follow up, here are the filed comments of the NSPS DD Coalition on EPA's proposal to evaluate existing regulations, along with NOPA's comments. In these remarks we ask that EPA's newly-formed Regulatory Reform Task Force recommend to the Administrator to:

1)Not finalize the proposed amendments to NSPS Subpart DD; and

2)Formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule in order to offset the costs of a future rule, as detailed in E.O. 13771 - Reducing Regulations and Controlling Regulatory Costs.

Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS ***prospectively*** and/or modifying it based on the Coalition comments submitted in 2014, as part of a larger Regulatory Reform effort.

We have also shared these comments directly with Josh Lewis.

Best,
Lorraine

From: Lorraine Gershman
Sent: Tuesday, May 09, 2017 5:06 PM
To: 'dravis.samantha@epa.gov' <dravis.samantha@epa.gov>
Cc: 'bolen.brittany@epa.gov' <bolen.brittany@epa.gov>; 'gunasekara.mandy@epa.gov' <gunasekara.mandy@epa.gov>
Subject: Follow up on NSPS DD: Grain Elevators

Samantha, thank you again for meeting with the Regulatory Improvement Council (Valis Associates) this morning. It was a pleasure to hear from you regarding some of industry's big concerns.

As I mentioned in our brief discussion, NOPA is a part of a coalition of agribusiness trade associations that have been working on the NSPS DD: Grain Elevators for the last decade. In October 2016, EPA's final NSPS package was sent to OMB for review under EO 12866. The revisions would include new emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating emissions from temporary storage facilities. The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 - the date the proposed amendments were published in the *Federal Register*. This rule package was not finalized by EPA, and on January 24, 2017, the rule was officially withdrawn from OMB. (See: https://www.reginfo.gov/public/do/eoDetails?rrid=126938) At this point in time, we are uncertain if this rule is going to be resubmitted to EPA for review or if EPA will no longer pursue revision of NSPS Subpart DD. That said, in order to not subject new grain elevators to these burdens, it is critical that EPA:
1) not finalize the proposed amendments to NSPS Subpart DD; and 2) formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule in order to offset the costs of a future rule, as detailed in E.O. 13771 - Reducing Regulations and Controlling Regulatory Costs. Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS, and other outdated NSPS, as part of a larger Regulatory Reform effort.

Jess McCluer, my counterpart at NGFA, briefed Josh Lewis on this issue at the OSDBU stakeholder meeting last month, and requested a meeting. Josh's response was that he is talking to colleagues in the air office and will be in touch soon to discuss next steps.

The coalition will be submitting more detailed comments on this issue to the docket next week, and we are happy to meet with you or the relevant contact person to discuss this issue in more detail.

(As an aside, I was encouraged to hear about EPA's intentions to bring back the Sector Strategies program. I was involved in that effort, and the CAAAC multipollutant sector strategy effort as well, when I was with the American Chemistry Council and found value in both efforts. And I also support EPA educational visits to regulated facilities. I worked with Penny Lassiter in OAQPS to have several of her technical staff accompany me to ethylene production facilities in advance of the RTR efforts.)

Please do not hesitate to contact me if I can be of further assistance.

Best,
Lorraine Gershman

Lorraine Gershman, P.E.
Vice President, Regulatory Affairs
National Oilseed Processors Association
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May 15, 2017

VIA ELECTRONIC MAIL

Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re.: NOPA's Comments on Evaluation of Existing Regulations (82 Fed. Reg. 17,793)
(Docket ID No. EPA-HA-OA-2017-0190)

Dear Ms. Dravis:

The National Oilseed Processors Association (NOPA) appreciates the opportunity to submit comments on EPA's Evaluation of Existing Regulations (82 Fed. Reg. 17,793, April 13, 2017).

The National Oilseed Processors Association (NOPA) is a national trade association that represents 13 companies engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans. NOPA's member companies process more than 1.8 billion bushels of oilseeds annually at 64 plants located in 20 states throughout the country.

The NAICS code that directly applies to oilseed processing facilities is 311224 – Oilseed processing. NOPA member company facilities range in size from small, family-owned businesses to large multi-national corporations.

NOPA belongs to the New Source Performance Standard (NSPS) DD Coalition, the National Ambient Air Quality Standards (NAAQS) Implementation Coalition (NIC), and the Food Associations Coalition managed by Herbert Estreicher of Keller and Heckman and fully support the comments submitted by those groups to this docket.

Regulatory Burden/Compliance

The ever-changing landscape of regulatory requirements for manufacturing facilities results in more and more resources devoted to compliance, in lieu of investing in new equipment and additional jobs. The list compiled below reflects regulations and policies that have a detrimental impact to the oilseed processing industry.

1) ***EPA's NAAQS/Preconstruction Permitting Process***. One of the biggest concerns with NAAQS is that a new/revised NAAQS is effective almost immediately after finalization, without any accompanying implementation regulations. A facility undergoing permitting may have to restart the entire permitting process in order to accommodate a revised NAAQS that becomes effective before the final permit is issued. The PSD regulations are highly complex and their implementation is largely achieved through ever-changing EPA guidance and policy documents that have not gone through rulemaking. As noted in comments below and in more detail in the comments submitted by the NIC, EPA's Appendix W modeling requirements do not accurately predict emission impacts for all

facilities, and can lead to overly restrictive pollution control requirements. EPA should strive to promptly issue implementation regulations after a new NAAQS is finalized in order to provide certainty to the regulated community.

2) ***EPA's NSPS DD (Grain Elevators) Rulemaking***. As noted in the comments submitted by the NSPS DD Coalition, NOPA is a part of a coalition of agribusiness trade associations that have been working on the NSPS DD: Grain Elevators for the last decade. In October 2016, EPA's final NSPS package was sent to OMB for review under EO 12866. The revisions would include new emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating emissions from temporary storage facilities. The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 - the date the proposed amendments were published in the *Federal Register*. This rule package was not finalized by EPA, and on January 24, 2017, the rule was officially withdrawn from OMB. We are uncertain if this rule is going to be resubmitted to OMB for review or if EPA will no longer pursue revision of NSPS Subpart DD. That said, so as to not subject new grain elevators to these burdens, it is critical that EPA: 1) not finalize the proposed amendments to NSPS Subpart DD; and 2) formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS, and other outdated NSPS, as part of a larger Regulatory Reform effort.

3) ***EPA's Startup, Shutdown, and Malfunction (SSM) Policy.*** Beginning with the court decision in Sierra Club v. Johnson, 551 F.3d 1019 (D.C. Cir. 2008), EPA has required facilities to be in continuous compliance with normal emission and operating limits, without allowing for any deviations due to unforeseen circumstances. If an event occurs that causes the facility to exceed a limit, the facility is at the mercy of the regulatory authority's discretion regarding enforcement for that event. Since this court decision, EPA has rarely allowed for the use of a work practice during the startup and shutdown periods of operation. EPA should look to set work practice standards or set alternative emission limits during periods of SSM, as allowed under sections 112(d)(2) and 112(h) of the Clean Air Act (CAA).

4) ***EPA's Risk and Technology Review (RTR) Rules***. Section 112(f) of the CAA requires EPA to review National Emission Standards for Hazardous Air Pollutants (NESHAP) rules after eight years to evaluate the remaining risk posed by the regulated facilities, and section 112(d)(6) of the CAA requires EPA to review advances in pollution control technologies. EPA has been slowly conducting these RTR rules over the past decade, and faces many more in the next few years. Despite regularly finding low residual risk from various regulated facilities, EPA has regularly pushed for lower emission limits, requiring the installation of expensive new equipment with limited to no demonstrated benefits. EPA should focus its reviews on ensuring that the NESHAP rules are effective, pose little residual risk, and do not impose additional costs on regulated industry without demonstrated benefits.

5) ***Federal Response Plans (FRP)***. EPA requires facilities that store over one million gallons of oil to prepare a Federal Response Plan. For the oilseed processing industry, this requirement also applies to vegetable oil, which is one of the primary products of our business. A FRP is required even if the facility has adequate secondary containment for their oil tanks. The FRP requires that regulated facilities have a contract with an oil spill response organization (OSRO) to provide emergency response if needed. Often, this contract requires a retainer be paid to the OSRO based on the amount of oil that the facility

stores. Because these facilities generally have adequate containment, the OSRO's services is rarely needed. In order to provide a timely response to a spill, facilities may be required to buy and maintain a boat to deploy spill-containing booms on a water body. Facilities with a FRP are also required to hold periodic costly drills. Finally, FRPs duplicate requirements in the Spill Prevention Control and Countermeasure (SPCC) plans – in particular, the Emergency Response Action Plan (ERAP). EPA should look to remove duplicative requirements that add burden to regulated facilities. One way for EPA to minimize the burden on vegetable oil producers is to exclude vegetable oil from the definition of "oil" in the FRP, and instead require vegetable oil producers to prepare only SPCC plans.

6) ***TSCA Reporting Requirements.*** The Toxic Substances Control Act (TSCA) requires facilities to regularly report the manufacture or use of chemicals in commerce. This requirement also applies to food products that are used for non-food uses. Although these substances are regulated by FDA for human consumption, if the same substance is used for a non-food use, information about its end use, production volumes, and other information is required to be reported. As requested in the the Food Associations' comments, EPA should eliminate the TSCA CDR reporting requirements for food substances already regulated by FDA.

7) ***Regional Consistency Requirements***. On August 3, 2016, EPA finalized revisions to its Regional Consistency regulations to more clearly address the implications of adverse federal court decisions that result from challenges to locally or regionally applicable actions. These revisions introduced a narrow procedural exception under which an EPA Regional office no longer needs to seek Headquarters concurrence to diverge from national policy in geographic areas covered by such an adverse court decision. EPA claimed that the revisions will help to foster overall fairness and predictability regarding the scope and impact of judicial decisions under the Clean Air Act, but in fact, it provides little regulatory certainty to companies that have operations in multiple EPA regions. EPA should reconsider this regulation.

8) ***EPA Electronic Reporting Requirements.*** In many new rules, EPA has begun requiring facilities to submit testing data electronically, such as through CEDRI. The goal of these rules is to reduce the paperwork burden; however, this has not yet been accomplished. For many of these rules, the states also need to obtain the test data, and not all states have access to EPA's database. In some cases, EPA requires the submittal of data before the testing companies can reformat their results to comply with EPA's rule, or EPA's database is not yet ready to accept testing data. EPA should work to ensure that all states have access to the same facility data to reduce duplication of effort for the regulated parties, and that the electronic databases and submittal portals are extensively tested before use.

9) ***Rulemaking through guidance.*** EPA has frequently issued guidance documents that served as de facto regulations, but these documents never underwent public notice and comment. Many are not even considered final agency actions and therefore can't be challenged. One such example is the 1990 New Source Review Draft Guidance. Even though this document is 27 years old and was never finalized, it still serves as the basis for many NSR permitting decisions. All federal Agencies should follow the proper notice and comment procedures to ensure that the regulations are being interpreted and applied consistently.

Manufacturing Permitting Process

New oilseed processing facilities undergo a lengthy and detailed environmental permitting process. This permitting process is filled with many challenges that can derail a project, including uncertainty in schedule for obtaining a final permit, the requirement to model emissions using programs that cannot account for site-specific inputs, and public input and challenges. Once a project hits a roadblock or is substantially delayed, the project may be scrapped and the accompanying jobs and growth would disappear.

A new or modified oilseed processing facility may need to obtain a preconstruction (Prevention of Significant Deterioration (PSD)/ Nonattainment New Source Review (NNSR)) air permit, a National Pollution Discharge Elimination System (NPDES) wastewater permit, an Army Corps wetlands permit, a state building permit, a state groundwater withdrawal permit, as well as develop numerous plans, including facility response/Spill Prevention Control and Countermeasure (SPCC), Process Safety Management (PSM)/Risk Management Plan (RMP), and Food Safety Modernization Act (FSMA). Furthermore, these facilities may also need to undergo the following reviews: Wetlands Assessments and Surveys, Threatened and Endangered Species and Habitat Assessments and Surveys, Floodplain Assessments and Surveys, Cultural Resources Assessments and Surveys, U.S. Army Corps of Engineers Clearances, and Section 401 State Water Quality Certifications. Once the preconstruction reviews and permits are secured, these facilities then need to obtain operating permits.

A large majority of these permits are regulated under EPA. For most environmental permits, the states have the authority to issue permits, with an EPA review often required. Such permits require dedicated permit staff in each state that are familiar with permitting requirements and facility operations.

For the past few years, states have struggled to balance their budgets, and permit writers have often been eliminated as part of budget cuts, losing experience and knowledge of the applicability of the rules and the industries under permit. At the same time, many states have been trying to welcome new manufacturing facilities and new jobs, resulting in a permit backlog that has not yet been resolved. Facilities will not be built unless permits can be issued in a timely manner.

Typically, the most onerous regulatory review/permitting program for oilseed processing facilities has involved air permitting. Over the past seven years, EPA has tightened several ambient air quality standards while increasing its reliance on modeling to demonstrate attainment and project impacts. For example, in 2010 EPA finalized a one-hour NO_X standard, only to later discover that models are predicting exceedances where monitors demonstrate attainment. At the same time, EPA has been slow to issue guidance to the state permitting agencies and has failed to highlight flexibility states have in drafting permits. As such, many permits have gotten bogged down, lengthening the timeline to permit issuance and increasing the permit backlog at the states.

Some specific examples of technical issues that recent industrial projects have encountered include:

- There is no formal mechanism for the States or the regulated community to implement any changes in the model or methods via EPA guidance or 40 CFR 51 Appendix W. Without changes to the model or methods, states are wed to using the current suite of modeling tools which frequently do not account for site-specific conditions and overestimate projected impacts. An overestimate of projected emission impacts may result in a facility having to install costly, unneeded control technology or a project not moving forward at all.
- Currently approved modeling programs do not adequately represent all facility scenarios. When modeling is compared to actual monitoring data, the model proves to be overly conservative. By having overly conservative models, some facilities have not been able to

demonstrate attainment with the current standards and have been forced to abandon new projects.

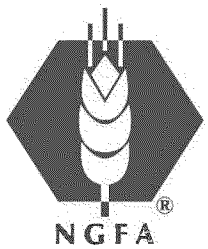
- Finally, in many cases EPA has failed to provide direction to the states which are responsible for permitting industrial facilities. Without guidance from EPA, many states are struggling to determine what is acceptable to EPA, and may resist innovative and flexible approaches. The result is that projects may be scrapped, along with any new jobs that would have accompanied the project.

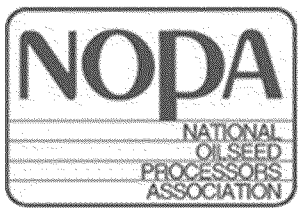
Recently, several NOPA members have announced new facilities or expansion of existing facilities, and have undergone the permitting process. One of the most trying aspects of the permit process is the never-ending uncertainty in the process itself. Any minor comment or correction may result in another full review of the permit application. Each delay in the permit process might result in a changed limit or guidance that must now be addressed in the permit. This would include a new NAAQS, or a ratcheting down of a storm water benchmark. A final permit is rarely final until all appeals are exhausted.

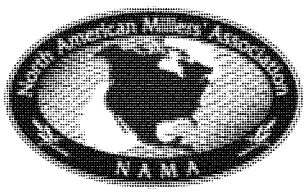
In conclusion, NOPA appreciates this Administration's efforts to relieve some of the regulatory burdens faced by the oilseed processing industry. Thank you in advance for your consideration of NOPA's comments. If you have any questions, or will like to further discuss our comments, please contact me at lgershman@nopa.org or 202-864-4368.

Sincerely,

Lorraine Krupa Gershman, P.E.
Vice President, Regulatory Affairs







May 15, 2017

Via E-Mail Filing in E-Docket No. EPA-HQ-OA-2017-0190

Ms. Samantha K. Dravis
Associate Administrator
Office of Policy
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

Re: **Comments to EPA's Regulatory Reform Task Force about the NSPS for Grain Elevators, 40 CFR Part 60, Subpart DD, Urging Prospective Repeal, in Response to 82 Fed. Reg. 17793 (Apr. 13, 2017), Docket No. EPA-HQ-OA-2017-0190**

Dear Ms. Dravis:

This statement is submitted on behalf of a coalition of six national trade associations in the agricultural sector, *i.e.,* the NSPS Subpart DD Coalition,[1] that have been working with the Environmental Protection Agency (EPA) since 2009 on its review of, and subsequent proposed amendments to, its New Source Performance Standards (NSPS) for grain elevators [40 CFR Part 60, Subpart DD, pursuant to section 111(b) of the Clean Air Act (CAA), 42 U.S.C. 7411(b)]. EPA's proposed rule appears at 79 Fed. Reg. 39242 (July 14, 2014).

NSPS Subpart DD applies to any "affected facility" constructed or modified after 1978 at certain grain elevators, *i.e.,* those with a permanent storage capacity exceeding 2.5 million

[1] The Coalition includes the Corn Refiners Association, the National Council of Farmer Cooperatives, the National Grain and Feed Association, the National Oilseed Processors Association, the North American Millers' Association, and the USA Rice Federation.

bushels or 1.0 million bushels if located at wheat flour mills, wet or dry corn mills, rice mills or soybean oil extraction plants.

Since issuance of EO 13563 in 2011, our Coalition has petitioned EPA repeatedly to repeal Subpart DD ***prospectively*** because the NSPS is outdated and unnecessary. In its 2014 rulemaking proposal, the Agency addressed the legitimacy of Subpart DD, but failed to demonstrate adequately that emissions from grain storage facilities pose a significant environmental risk to human health and welfare on a going-forward basis. In our December 2014 comments [copy attached], we argued that this failure means that EPA lacks statutory authority to apply Subpart DD to future events, under not only the CAA, but also the Paperwork Reduction Act (PRA). In March 2016, we made the same point in comments [copy attached] on a then-pending Information Collection Request (ICR) for Subpart DD. That ICR predicted that the instances during 2016-19 of new construction or modification of "affected facilities" at the relevant grain elevators would be zero, thereby undercutting EPA's unsubstantiated claims to the contrary in its 2014 rulemaking proposal.

In October 2016, EPA's package taking final action on the 2014 proposal was sent to OMB for review under EO 12866. We have not been shown a copy of the package to review, but EPA staff indicated orally to us at the time that it would include new emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating the contribution of temporary storage facilities to "permanent storage." The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 – the date the proposed amendments were published in the ***Federal Register***.

Given that array of potential outcomes, we suspected that the final package might contain or reference data and analyses that came into existence after the close of the comment period (December 22, 2014) – and hence were not open to public comment – and that such materials could be of central importance to some of EPA's key final decisions. We petitioned EPA and OMB to examine that possibility and, if true, urged that the comment period be reopened. [Copy of petition attached.] On December 14, 2016, the Coalition met with OMB to discuss these concerns. During the cordial meeting, we argued that if the package rebuts our strong arguments submitted during the comment period, then likely it contains enough new data and analysis to trigger an obligation to re-open the comment period.

The final action package was not finalized by EPA and on January 24, 2017, the package was officially withdrawn from OMB. (See: https://www.reginfo.gov/public/do/eoDetails?rrid=126938).

At this point in time, we are uncertain if this rule is going to be resubmitted to OMB for review or if EPA no longer will pursue revision of NSPS Subpart DD/DDa. That said, so as not to subject new grain elevators to these unnecessary regulatory burdens, we ask that EPA's newly-formed Regulatory Reform Task Force recommend the following actions to the Administrator:

1) Not finalize the proposed amendments to NSPS Subpart DD; and

2) Formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule to offset the costs of a future rule, as detailed in E.O. 13771 – Reducing Regulations and Controlling Regulatory Costs.

Further, we encourage EPA to examine the possibility of rescinding this NSPS ***prospectively*** and/or modifying it based upon the Coalition comments submitted in 2014, as part of a larger regulatory reform effort.

Based upon our own extensive comments and the comments of others, and the lack of any comments from non-governmental organizations, we believe that EPA could effectuate such a repeal immediately through final action in the present rulemaking, without going through any additional notice-and-comment rulemaking.

We appreciate the opportunity to provide the Regulatory Reform Task Force with our views on Subpart DD. If you have any questions, please contact the undersigned at **jmccluer@ngfa.org**.

Sincerely,

Jess McCluer
National Grain and Feed Association
Coalition Chair

Attachment

cc (via email): Jeff Knight (Coalition counsel)
Josh Lewis (EPA)
William Schrock (EPA)
Peter Wyckoff (Coalition counsel)

To: Lovell, Will (William)[lovell.william@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Hengst, Benjamin[Hengst.Benjamin@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Lamson, Amy[Lamson.Amy@epa.gov]; Sutton, Tia[sutton.tia@epa.gov]; Adams, Darryl[Adams.Darryl@epa.gov]
From: Burch, Julia
Sent: Tue 7/31/2018 1:18:55 PM
Subject: FW: CAFE/GHG Preamble
EO12866 LD CAFE CO2 NHTSA 2127-AL76 EPA Preamble 180730.docx

This is the latest version of the GHG/CAFÉ NPRM that we received from NHTSA last night. Mandy asked me to forward this to OP immediately for upload. I will send the RIA next.

Please let me know if you need anything else.
Thanks!

Regards,

Julia Burch
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202-564-0961

From: Mullins, Timothy (OST) [mailto:Timothy.Mullins@dot.gov]
Sent: Monday, July 30, 2018 7:24 PM
To: Burch, Julia <Burch.Julia@epa.gov>
Subject: CAFE/GHG Preamble

Julia,
Attached is the preamble; the RIA is forthcoming.
-Tim

To: Jackson, Ryan[jackson.ryan@epa.gov]; Wehrum, Bill[Wehrum.Bill@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Harlow, David[harlow.david@epa.gov]; Lyons, Troy[lyons.troy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; White, Elizabeth[white.elizabeth@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Leopold, Matt (OGC)[Leopold.Matt@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Molina, Michael[molina.michael@epa.gov]; Darwin, Henry[darwin.henry@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]; Konkus, John[konkus.john@epa.gov]; Orlin, David[Orlin.David@epa.gov]
Cc: Wooden-Aguilar, Helena[Wooden-Aguilar.Helena@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Richardson, RobinH[Richardson.RobinH@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Hope, Brian[Hope.Brian@epa.gov]; Fonseca, Silvina[Fonseca.Silvina@epa.gov]; Lovell, Will (William)[lovell.william@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]; Lamson, Amy[Lamson.Amy@epa.gov]; Pritchard, Eileen[Pritchard.Eileen@epa.gov]; Gordon, Stephen[gordon.stephen@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]; Atkinson, Emily[Atkinson.Emily@epa.gov]; DeBell, Kevin[debell.kevin@epa.gov]; Millett, John[Millett.John@epa.gov]; Carroll, Carly[Carroll.Carly@epa.gov]; Sauerhage, Maggie[Sauerhage.Maggie@epa.gov]; Birgfeld, Erin[Birgfeld.Erin@epa.gov]; Burch, Julia[Burch.Julia@epa.gov]; Block, Molly[block.molly@epa.gov]
From: Johnson, Laura-S
Sent: Thur 8/2/2018 1:28:57 PM
Subject: RE: SIGNED: Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (SAFE Vehicles Rule)
LD CAFE CO2 NHTSA 2127-AL76 EPA Preamble 180801 FR Version w Signatures.pdf

We just received from DOT this morning a compressed electronic file of the rule with the DOT and EPA signatures pages.

For your reference, the DOT signature is on p. 1216 and the EPA signature is on p. 1217.

From: Johnson, Laura-S
Sent: Wednesday, August 01, 2018 3:53 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Darwin, Henry <darwin.henry@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Konkus, John <konkus.john@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Lamson, Amy <Lamson.Amy@epa.gov>; Pritchard, Eileen <Pritchard.Eileen@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; DeBell, Kevin <debell.kevin@epa.gov>; Millett, John <Millett.John@epa.gov>; Carroll, Carly <Carroll.Carly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: SIGNED: Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (SAFE Vehicles Rule)
Importance: High

Good afternoon.
Today, the Administrator signed a joint, proposed ruled from the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) titled "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (SAFE Vehicles Rule)."

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Because the rule is 1217 pages, I will not be providing a scanned copy of the signed, dated proposed rule (as we typically do) for fear of crashing everyone's computer!

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell Personal Phone / Ex. 6
Office (202) 566-1273 | johnson.laura-s@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Owens, James (OST)
Sent: Tue 7/31/2018 1:27:56 PM
Subject: CAFE GHG PRIA
EO12866 LD CAFE CO2 NHTSA 2127-AL76 EPA PRIA 180730.docx

Brittany and Mandy:

This email attaches the clean version of the PRIA. Hopefully this one gets through too.

Best,
-James

***

James C. Owens
Deputy General Counsel
U.S. Department of Transportation
202-366-4702
James.owens@dot.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Gunasekara, Mandy
Sent: Thur 7/26/2018 1:28:43 PM
Subject: FW: EPA Comments on NHTSA Preamble and PRIA
EPA comments to OIRA on July 26 2018_EO12866 LD CAFE CO2 NHTSA 2127-AL76 EPA Preamble 180720__final.docx
EPA comments to OIRA on July 26 2018_EO12866 LD CAFE NHTSA 2127-AL76 PRIA received on 180720_final.pdf

FYI

From: Moran, Robin
Sent: Thursday, July 26, 2018 9:27 AM
To: Achanta, Chandana L. EOP/OMB <EOP / Ex. 6>; Whiteman, Chad S. EOP/OMB (Chad_S_Whiteman@omb.eop.gov) <EOP / Ex. 6>
Cc: Mullins, Timothy (OST) <Timothy.Mullins@dot.gov>; Charmley, William <charmley.william@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>; Buchsbaum, Seth <buchsbaum.seth@epa.gov>; Olechiw, Michael <olechiw.michael@epa.gov>; Lieske, Christopher <lieske.christopher@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: EPA Comments on NHTSA Preamble and PRIA

Dear Chandana and Chad,

Attached are EPA's comments on the latest version of the NHTSA preamble and PRIA, which we received on July 20.

Thanks.

Best,

Robin

Robin Moran
Senior Policy Advisor
U.S. EPA, Office of Transportation and Air Quality
2000 Traverwood Dr.
Ann Arbor, MI 48105
(734) 214-4781 (phone)

Begin forwarded message:

> **From:** "Tamm, James (NHTSA)" <james.tamm@dot.gov>
> **To:** "Mullins, Timothy (OST)" <Timothy.Mullins@dot.gov>, "Achanta, Chandana L. EOP/OMB" <EOP / Ex. 6>
> **Cc:** "Whiteman, Chad S. EOP/OMB" <EOP / Ex. 6>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
> **Subject: Updated CAFE CO2 NPRM Preamble under EO 12866 review**
>
> Hi All,
> Please see the attached clean and tracked changes versions of the Preamble. They include changes that are intended to be responsive to all interagency comments. The tracked changes version shows changes relative to the updated Preamble that was provided on July 10.
> Jim
>
> ---
>
> **From:** Mullins, Timothy (OST)
> **Sent:** Friday, July 20, 2018 4:57 PM
> **To:** Achanta, Chandana L. EOP/OMB <EOP / Ex. 6>
> **Cc:** Whiteman, Chad S. EOP/OMB <EOP / Ex. 6>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Tamm, James (NHTSA) <james.tamm@dot.gov>

Subject: Re: Summary of interagency comments received on draft NPRM under EO 12866 review

Hi
We expect to have the documents ready soon. I've added Jim who will be sending them over.
Thanks,
Tim

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Mullins, Timothy (OST)
Sent: Thursday, July 19, 2018 8:31 PM
To: Achanta, Chandana L. EOP/OMB
Cc: Whiteman, Chad S. EOP/OMB; Hengst, Benjamin; Bolen, Brittany
Subject: RE: Summary of interagency comments received on draft NPRM under EO 12866 review

Good evening,
Attached please find further responses to interagency comments.
Thanks,
Tim

From: Mullins, Timothy (OST)
Sent: Thursday, July 19, 2018 4:12 PM
To: Achanta, Chandana L. EOP/OMB <EOP / Ex. 6>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Whiteman, Chad S. EOP/OMB <EOP / Ex. 6>
Subject: RE: Summary of interagency comments received on draft NPRM under EO 12866 review

To clarify, the attached shows which specific interagency comment I was referring to.
Thanks,
Tim

From: Mullins, Timothy (OST)
Sent: Thursday, July 19, 2018 4:08 PM
To: 'Achanta, Chandana L. EOP/OMB' <EOP / Ex. 6>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Whiteman, Chad S. EOP/OMB <EOP / Ex. 6>
Subject: RE: Summary of interagency comments received on draft NPRM under EO 12866 review

Good afternoon,
The Preamble will be updated with these edits.
Thanks,
Tim

From: Achanta, Chandana L. EOP/OMB [mailto:EOP / Ex. 6]
Sent: Wednesday, July 18, 2018 3:39 PM
To: Mullins, Timothy (OST) <Timothy.Mullins@dot.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Whiteman, Chad S. EOP/OMB <EOP / Ex. 6>
Subject: Summary of interagency comments received on draft NPRM under EO 12866 review

Hi all

Here is a summary of interagency comments received on the draft CAFÉ/GHG NPRM under EO 12866 review. These

are subject to further policy review.

Thanks
Chandana

To: Baptist, Erik[baptist.erik@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Harlow, David
Sent: Thur 10/19/2017 9:54:39 PM
Subject: Further revised draft of gliders NPR
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev2.docx

Attached (as "Rev2") is another draft of the gliders NPR, which I have revised (1) to reflect the edits and comments passed along to me this afternoon by Erik, and (2) to implement corrections to some typographical errors I'd caught yesterday but hadn't yet made to the document.

Erik, I leave it up to you whether you want to send along this version of the draft to the OGC staff that you mentioned are already reviewing yesterday's version. I figure that, if they wanted, they could produce a red-line that would show the differences (which are relatively minor but not wholly nonconsequential).

Also, I don't know if the earlier version of the draft was ever shared with the OTAQ staff. If not, I leave it to you, or others, to decide when they might need to see this. Thanks.

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Baptist, Erik[baptist.erik@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Harlow, David
Sent: Wed 11/1/2017 9:11:28 PM
Subject: Another revised draft of the gliders NPRM
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev10.docx

While I thought we were finished with the substantive portions of the gliders NPRM, Mandy had a good thought that I've implemented in this new draft, "Rev10." The idea is to

Deliberative Process / Ex. 5

As Mandy and I discussed, i

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

In any case, I've typed up a paragraph that seeks to accomplish this and have stuck it at

Deliberative Process / Ex. 5

comments. Rather than make you pull up the draft in order to review this addition, it is set forth below, verbatim:

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Baptist, Erik[baptist.erik@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Harlow, David
Sent: Wed 10/18/2017 6:43:47 PM
Subject: Revised draft of gliders NPR
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev1.docx

Attached is a new draft of the gliders NPR, revised to reflect Erik's specific comments from last night and our discussion this morning.

Please note, as was discussed this morning, the language in Section V of the draft ("Statutory and Executive Order Reviews") will need to be reviewed. I have not made any changes to that section, which was provided by the OTAQ staff.

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Harlow, David[harlow.david@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Baptist, Erik
Sent: Wed 10/18/2017 1:56:23 AM
Subject: RE: Revised "integrated" draft of gliders NPR
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17.docx

David,

Attached please find my edits and comments. I think it makes sense to talk through my comments/edits. Can we find a time tomorrow to discuss? I am copying Brittany to see if the Office of Policy would like to join this discussion as well. 8:00/8:30 a.m. might be the best time to meet, given that may seems to be non-stop after 9:00 a.m.

Thanks,

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Harlow, David
Sent: Tuesday, October 17, 2017 6:43 PM
To: Baptist, Erik <baptist.erik@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Revised "integrated" draft of gliders NPR

A revised draft is attached for your review and comment.

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Baptist, Erik[baptist.erik@epa.gov]
From: Harlow, David
Sent: Wed 11/1/2017 3:00:35 PM
Subject: Revised gliders NPRM
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev9.docx

Attached is a new draft of the gliders NPRM. It has been revised to include the Deliberative Process / Ex. 5 language that Brittany earlier passed along.

I have also taken the liberty of revising Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

* * * *

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Baptist, Erik[baptist.erik@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Harlow, David
Sent: Tue 10/31/2017 8:10:47 PM
Subject: RE: Revised draft of gliders NPRM Deliberative Process / Ex. 5
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev8.docx

Thanks, Eric, those comments were great. I've implemented them. The attached "Rev8" is now the latest version.

As for your comment/question: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 - if I had to guess, I would think probably not. But that's just a guess on my part.

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Baptist, Erik
Sent: Tuesday, October 31, 2017 3:37 PM
To: Harlow, David <harlow.david@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Revised draft of gliders NPRM Deliberative Process / Ex. 5

Attorney-Client Privilege
Deliberative

David,

Some minor edits/comments are attached. Please note my proposed changes to Deliberative Process / Ex. 5

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Harlow, David
Sent: Tuesday, October 31, 2017 2:28 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>

Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Subject: Revised draft of gliders NPRM (Deliberative Process / Ex. 5

The attached ("Rev7") is the latest draft, with the " Deliberative Process / Ex. 5 Al Gartland passed along to me a short while ago now having replaced what was there before.

This is now "finished," from my point of view . . . unless there is any additional revised "back end" language that needs to be implemented, or unless anybody here still wants to weigh in on the preamble discussion as a whole.

Thanks.

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Harlow, David[harlow.david@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Grundler, Christopher[grundler.christopher@epa.gov]; Baptist, Erik[baptist.erik@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Charmley, William[charmley.william@epa.gov]; Sutton, Tia[sutton.tia@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]
From: Hengst, Benjamin
Sent: Tue 11/7/2017 8:29:36 PM
Subject: Glider NPRM update
EO12866_Repeal of Emission Requirements for Gliders 2060-AT79 NPRM FRN_2....docx
EO12866_Repeal of Emission Requirements for Gliders 2060-AT79 NPRM FRN_2....docx

Hi all:

Earlier today we had a second interagency call on the glider NPRM. David Harlow participated in that call.

Reviewers from DOJ and DOT offered fairly minor suggestions for line edits. We made those edits and have sent another passback to OMB (see email below, along with attached redline/clean drafts).

Chad Whiteman at OMB called just now and indicated that OMB will probably conclude review Deliberative Process / Ex. 5
Deliberative Process / Ex. 5
Assuming we get clearance from OMB, Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,
Ben

From: Sutton, Tia
Sent: Tuesday, November 07, 2017 3:21 PM
To: Whiteman, Chad S. EOP/OMB Ex.6
Cc: Owens, Nicole <Owens.Nicole@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: New EPA passback to EO 12866 Interagency Comments on EPA Glider NPRM

Chad,
Attached are redline and clean versions of the I Deliberative Process / Ex. 5 discussed on today's call. Also, as I mentioned

Deliberative Process / Ex. 5

Please let us know if you have any questions or problems with the files.

Thanks,
Tia

To: Nickerson, William[Nickerson.William@epa.gov]; Owens, Nicole[Owens.Nicole@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Dravis, Samantha
Sent: Fri 10/20/2017 8:27:15 PM
Subject: Fwd: edits to NRPM
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev4.docx
ATT00001.htm

Please upload to ROCIS. Thanks!!

Sent from my iPhone

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: October 20, 2017 at 4:00:46 PM EDT
To: "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Baptist, Erik" <baptist.erik@epa.gov>
Subject: RE: edits to NRPM

Done. This latest draft is "Rev4."

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Bolen, Brittany
Sent: Friday, October 20, 2017 3:34 PM
To: Harlow, David <harlow.david@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Subject: Fwd: edits to NRPM

Hi David,
Please incorporate the following edits from OP.
Thank you,
Brittany
Begin forwarded message:

From: "McGartland, Al" <McGartland.Al@epa.gov>
Date: October 20, 2017 at 12:48:43 PM EDT
To: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>
Cc: "Bolen, Brittany" <bolen.brittany@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Marten, Alex" <Marten.Alex@epa.gov>
Subject: edits to NRPM

Hi Ben. **Deliberative Process / Ex. 5**

rlso attached.

To: Baptist, Erik[baptist.erik@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]
From: Harlow, David
Sent: Fri 10/20/2017 5:13:18 PM
Subject: Another revised draft of gliders NPR
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev3.docx

Attached (now as "Rev3") is the latest draft of the gliders NPR, which I have revised to

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'll look again, but I didn't want to hold up getting this turned around and back out.

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Baptist, Erik
Sent: Fri 10/20/2017 3:46:20 PM
Subject: FW: Draft Proposal of Glider Repeal; OGC's Edits/Comments
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 (+....docx

FYI

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Baptist, Erik
Sent: Friday, October 20, 2017 9:39 AM
To: Harlow, David <harlow.david@epa.gov>
Subject: Draft Proposal of Glider Repeal; OGC's Edits/Comments

David,

Attached please find OGC's edits and comments on the draft proposal of the glider repeal.

Please let me know if you have any questions.

Thanks,

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; McGartland, Al[McGartland.Al@epa.gov]
From: Nickerson, William
Sent: Fri 10/20/2017 2:52:26 PM
Subject: RE: Gliders
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - ... minor edits.docx

The attached version includes the minor edits I mentioned yesterday, and includes the newly acquired RIN number.

From: Bolen, Brittany
Sent: Friday, October 20, 2017 10:25 AM
To: Nickerson, William <Nickerson.William@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>
Subject: RE: Gliders

Bill – attached is an updated version of the glider NPRM I received last night. Please make your redline edits and comments to this

Deliberative Process / Ex. 5

Thanks,
Brittany

From: Bolen, Brittany
Sent: Thursday, October 19, 2017 10:44 AM
To: Nickerson, William <Nickerson.William@epa.gov>
Cc: Samantha Dravis (dravis.samantha@epa.gov) <dravis.samantha@epa.gov>
Subject: Gliders
Importance: High

Hi Bill –

Deliberative Process / Ex. 5

Thanks,
Brittany

Brittany Bolen
Deputy Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
(202) 564-3291
Bolen.Brittany@epa.gov

To: Baptist, Erik[baptist.erik@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]
From: Harlow, David
Sent: Fri 10/27/2017 10:45:24 PM
Subject: Revised draft of gliders NPRM
Repeal of Emission Requirements for Glider Vehicles - NPRM - 10.17.17 - Rev5.docx

Ladies and gentlemen,

Attached for your review and comment is the revised draft of the gliders NPRM (now styled as "Rev5").

As you will see, this new draft is about five pages longer than the prior draft. Most of the

Deliberative Process / Ex. 5

Thank you.

David S. Harlow
Senior Counsel
Immediate Office of the Acting Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Wed 8/9/2017 10:13:30 PM
Subject: RE: Please email the 2 docs you refined today on reg reform & CAFE
170808_CAFE (3-BB).docx
Reg Reform 1-page (4-BB) - Copy.docx

Please see attached.

-----Original Message-----
From: Bolen, Brittany
Sent: Wednesday, August 9, 2017 6:13 PM
To: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Please email the 2 docs you refined today on reg reform & CAFE

Sent from my iPhone

On March 15, 2017, Administrator Pruitt and Secretary Chao announced their intent to reconsider the Final Determination of the Mid-Term Evaluation (MTE) that EPA issued on January 12, 2017, which recommended no change to the greenhouse gas (GHG) standards for light-duty vehicles for model years (MY) 2022- 2025. Concerns have been raised about the premature timing, adequacy of EPA's analysis, and stringency of these standards. Stakeholders have also raised concerns over the medium- and heavy-duty vehicle standards.

Background

In 1975, the Energy Policy Conservation Act established Corporate Average Fuel Economy (CAFE) standards for passenger cars and light trucks. The standards were set by the National Highway Traffic Safety Administration (NHTSA) and based on "technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy."

In 2007, the Energy Independence and Security Act required NHTSA to increase CAFE standards to at least 35 miles per gallon (mpg) by 2020, up from roughly 26.6 mpg in 2007. It also directed DOT to study improvements in medium- and heavy-duty vehicles and, if feasible, issue standards for those vehicles as well. That same year, in *Massachusetts v. EPA*, the Supreme Court held that GHGs fit the definition of an "air pollutant" under the Clean Air Act (CAA) §202(a)(1) and if EPA found GHGs to endanger public health or welfare "EPA has the statutory authority to regulate the emissions of such gases from new motor vehicles." In December 2009, EPA issued its GHG endangerment finding under CAA §202(a)(1).

Light-duty Vehicles

In May 2010, EPA and NHTSA issued the first-ever GHG and CAFE standards for light-duty vehicles MY 2012-2016 ("Phase 1"). In October 2012, EPA and NHTSA issued standards for MY 2017-2025 ("Phase 2"). Phase 2 required an MTE by April 2018. The Obama Administration completed the MTE simply maintaining the standards in January 2017, nearly a year and a half before it was due, which excluded critical data on recent MY vehicles and consumer behavior trends.

Considerations Going Forward

1.

2.

Deliberative Process / Ex. 5

3.

4. Deliberative Process / Ex. 5

Heavy-duty Vehicles

In September 2011, EPA and NHTSA issued standards for medium- and heavy-duty vehicles MY 2014-2018 ("Phase 1"). These standards applied to newly manufactured engines, tractors, vocational vehicles, large pickups, and vans, but did *not* regulate trailers. In October 2016, EPA and NHTSA issued standards for medium- and heavy-duty vehicles MY 2021-2027 ("Phase 2"), which regulated trailers starting with MY 2018.

Considerations Going Forward

1. Deliberative Process / Ex. 5
2.
3.

v

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Lovell, Will (William)[lovell.william@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Curry, Bridgid
Sent: Fri 8/10/2018 9:31:57 PM
Subject: OAP's 7/20 passback to OMB re Strat Ozone - §608 Refrigerant Management - Revisions (SAN 6376)
EO12866_CAA Part 82F 2060-AT81 NPRM FRN 20180720.docx

Hi Brittany,

Attached is the RLSO sent by OAP to OMB on 7/20 and a summary of the interagency issues provided by Bruce. We asked Jim Laity about this today He said OMB will be responding to EPA's pass back next week.
Please let us know if you have any additional questions.

Bridgid

The package has been under review at OMB for 98 days as of today.

Deliberative Process / Ex. 5

Litigation in NEDA/CAP v. EPA, Case No. 17-1016 is held in abeyance; litigation filing dates are being extended to 8/17/2018.

Deliberative Process / Ex. 5

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Nickerson, William
Sent: Thur 7/26/2018 6:52:45 PM
Subject: CPP RIA
EO12866_GHG State Guidelines 2060-AT67 RIA_20180723.docx

As requested

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Nickerson, William[Nickerson.William@epa.gov]
From: Lamson, Amy
Sent: Sat 6/30/2018 1:51:22 AM
Subject: Re: OAR FAR: Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units
5548.6 FAR memo.pdf
Preamble Subpart TTTT Review Proposal FAR 29 June 2018.docx

Hi, Brittany,

As requested, here are the materials that OAR distributed for the upcoming FAR meeting for the Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units (Tier 1) for the Deputy Administrator. Please let me know if you have any questions.

Amy

From: Iglesias, Amber
Sent: Friday, June 29, 2018 2:51 PM
To: Iglesias, Amber; Fellner, Christian; Jordan, Scott; Elman, Barry; Lamson, Amy; Adams, Darryl; Ayres, Sara; Durkee, Stanley
Cc: Brown, Stephanie N.; Culligan, Kevin; Hutson, Nick; Eck, Janet; OP ADP Calendar; Eagles, Tom; Farrar, Wanda; Bartlett, Keith; Simons, Andrew; Corrales, Mark; Burden, Susan; Rush, Alan; Henigin, Mary; Marks, Matthew; Hoffman, Howard; Zenick, Elliott
Subject: OAR FAR: Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units
When: Tuesday, July 24, 2018 2:00 PM-3:00 PM.
Where: V **Ex. 6 Conference Code**

The Final Agency Review meeting on SAN 5548.6, proposed rule for the Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units is scheduled for July 24, 2018, at 2:00 pm, Room 6530 of the William Jefferson Clinton North Building, **Ex. 6 Conference Code**

Ex. 6 Conference Code

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 29 2018

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Final Agency Review Meeting on SAN 5548.6, Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units

FROM: for Wanda Farrar
Steering Committee Representative, OAR (6103A)

TO: See Addressees

The Final Agency Review meeting on SAN 5548.6, proposed rule for the Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units is scheduled for July 24, 2018, at 2:00 pm, Room 6530 of the William Jefferson Clinton North Building, call-in number (919) 541-4332.

The Final Agency Review package is attached. The proposed rule for the Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units is being developed as a Tier 1 project under the EPA's regulatory development process.

Final Agency Review is the final point for internal agency concurrence for the attached package. The Final Agency Review meeting provides a forum for confirming that:

1. The work group successfully completed its job and all issues have been resolved or elevated;
2. The package (action and relevant documents) is complete and ready for the Assistant Administrator's signature; and
3. All agency and external requirements have been met.

Each work group member must come to the meeting representing the position of his/her Assistant Administrator (AA)/Regional Administrator (RA). Prior to the meeting, you should either have briefed the AA/RA or their representative (if delegated), or have received written sign-off. In addition, any documents should be given in writing to the Work Group Chair and the Regulatory Management Division (RMD) of OP or at the meeting.

Your response at this meeting will constitute your AA's/RA's position in one of three ways: "concurrence," "concurrence with comment" or "non-concurrence." "Concurrence" should be used to show full agreement, although strictly editorial or non-substantive comments should also be included in this category of response. "Concurrence with comment" indicates that the concurring office would like the package to move forward, but has substantive disagreements or issues. "Non-concurrence" indicates

that the responding office does not think the package should move forward and has major substantive concerns. If a participating office or Region is not represented at the meeting or has not previously contacted the Work Group Chair or RMD with a position, "concurrence without comment" will be assumed.

You should come to the meeting prepared to respond with one of these choices and to briefly characterize any issues on which you have comments. The RMD will provide a closure memorandum subsequent to the meeting, documenting all positions given and any further action agreed upon. If, prior to signature, the lead office is unable to incorporate requested changes that have AA/RA level support, it should address them (and the reasons for rejecting them) in the action memorandum to the Administrator accompanying the package for signature.

Please address your FAR comments to Assistant Administrator Bill Wehrum and send the original memorandum directly to him. Please also forward a copy of your comments to me at Farrar.Wanda@epa.gov; Christian Fellner, Work Group Chair (fellner.christian@epa.gov); and Darryl Adams, RMD Desk Officer (adams.darryl@epa.gov).

If you have any questions on this package, please contact Christian Fellner at (919) 541-4003.

Attachments

Addressees: (Work Group Members)
Christian Fellner, OAR (RTP), Chair
Scott Jordan, OGC (8RC)
Barry Elman, OP (1803A)
Amy Lamson, OP (1803A)
Darryl Adams, OP (1803A)
Stephanie N. Brown, OP (1803A)
Sara Ayres, OECA (E-19J)
Stan Durkee, ORD (8104R)

cc: OP ADP Calendar
Kevin Culligan, OAR (6301A)
Nick Hutson, OAR (RTP)
Janet Eck, OAR (RTP)

(Steering Committee Members)
Tom Eagles, OAR (6103A)
Keith Bartlett, OECA (2201A)
Andrew Simons, OGC (2333A)
Mark Corrales, OP (1803A)
Susan Burden, ORD (8104R)

To: Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Baptist, Erik
Sent: Mon 10/9/2017 9:23:33 PM
Subject: CPP Proposal; Minor, But Significant, Edits re ANPRM
EO12866_CPP Repeal 2060-AT55 Proposal_20171005 (002).docx

Attorney-Client Privilege
Attorney Work Product
Deliberative

Sam, Mandy, and Brittany:

As I have been reviewing the draft ANPRM and Status Report in the CPP litigation, I went back to our proposal to see what we are

Attorney Client / Ex. 5

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsyvlania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: McGartland, Al
Sent: Wed 9/27/2017 8:44:49 PM
Subject: FW: Draft RIA and supporting files
forgone benefit and avoided cost tables - 09272017.xlsx
present value analysis - 09272017.xlsx
forgone climate benefit analysis - 09272017.xlsx
forgone health co-benefit analysis - 09272017.xlsx
DS-EE-driven reduction in expenditures - 09272017.xlsx
CPP_Final_RIA_2015.pdf
EO12866_CPP Repeal 2060-AT55 Proposal RIA Spreadsheet_20170927.xlsx
EO12866_CPP Repeal 2060-AT55 Proposal RIA_20170927.docx
Response_to_Interagency_Comments_092717.docx

Just in case. This is a complete set of files as sent to OMB. The RIA is in the pdf file. You can ignore the excel spreadsheet files.

From: Culligan, Kevin
Sent: Wednesday, September 27, 2017 4:40 PM
To: Szabo, Aaron L. EOP/OMB EOP / Ex. 6
Cc: Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Weatherhead, Darryl <Weatherhead.Darryl@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>
Subject: FW: Draft RIA and supporting files
Importance: High

From: Macpherson, Alex
Sent: Wednesday, September 27, 2017 4:37 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Sasser, Erika <Sasser.Erika@epa.gov>; Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Keaveny, Brian <Keaveny.Brian@epa.gov>
Subject: Draft RIA and supporting files
Importance: High

Kevin

Please find attached the draft RIA and ROCIS spreadsheet.

The attached spreadsheets, which were used to produce the results in the draft RIA, were requested by interagency reviewers.

We are also including the 2015 Final CPP RIA as supporting documentation.
Let me know if you have any questions. Thanks.
Alex

Alexander Macpherson, PhD
Senior Economist
Office of Air and Radiation
US Environmental Protection Agency
919-541-9770

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Rees, Sarah
Sent: Fri 10/6/2017 8:18:21 PM
Subject: FW: CPP Repeal Pkg for OMB
EO12866_CPP Repeal 2060-AT55 Proposal_20171005.docx
EO12866_CPP Repeal 2060-AT55 Proposal RIA_20171006.docx

From: Curry, Bridgid
Sent: Friday, October 06, 2017 3:30 PM
To: Kime, Robin <Kime.Robin@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: FW: CPP Repeal Pkg for OMB

Hi Robin,
Here are the documents. We have both the Proposal to Repeal CPP and the RIA.
Thanks,
Bridgid

From: Adams, Darryl
Sent: Friday, October 06, 2017 3:28 PM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: FW: CPP Repeal Pkg for OMB

From: Iglesias, Amber
Sent: Friday, October 06, 2017 2:43 PM
To: Adams, Darryl <Adams.Darryl@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Rush, Alan <Rush.Alan@epa.gov>
Subject: FW: CPP Repeal Pkg for OMB

Darry,

Deliberative Process / Ex. 5

From: Eck, Janet
Sent: Friday, October 06, 2017 1:49 PM
To: Iglesias, Amber <Iglesias.Amber@epa.gov>
Cc: Rush, Alan <Rush.Alan@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Macpherson, Alex <Macpherson.Alex@epa.gov>; Weatherhead, Darryl <Weatherhead.Darryl@epa.gov>; Scavo, Kimber <Scavo.Kimber@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>
Subject: FW: CPP Repeal Pkg for OMB

Hi Amber, Forwarding the Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (SAN 5548.7) to OP in anticipation of OMB clearance for upload into ROCIS. I will let you know when we receive the final go-ahead to upload. Thanks.

From: Culligan, Kevin
Sent: Friday, October 06, 2017 1:40 PM
To: Eck, Janet <Eck.Janet@epa.gov>
Cc: Hutson, Nick <Hutson.Nick@epa.gov>
Subject: Re: CPP Repeal Pkg for OMB

We can also move package to OP. Should be cleared soon

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Gunasekara, Mandy
Sent: Mon 10/2/2017 1:30:09 PM
Subject: CPP
09.22.2017 RLSO CPP Proposal.FR Notice.docx

Mandy M. Gunasekara
Senior Policy Advisor for Office of Air and Radiation
Office of the Administrator
US Environmental Protection Agency

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]
Cc: Dunham, Sarah[Dunham.Sarah@epa.gov]
From: Lewis, Josh
Sent: Thur 10/5/2017 10:55:56 PM
Subject: Fwd: CPP Proposal and RIA
EO12866_CPP Repeal 2060-AT55 Proposal_20171005_RLSO.DOCX
ATT00001.htm
EO12866_CPP Repeal 2060-AT55 Proposal RIA_20171005_RLSO.DOCX
ATT00002.htm

Here are the latest redline/strikeout versions of the RIA and preamble that are back at OMB.

Our understanding is this is being set up for clearance tomorrow morning and so we will be telling folks internally to stand down for the evening.

To: Wehrum, Bill[Wehrum.Bill@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Harlow, David[harlow.david@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Culligan, Kevin
Sent: Sat 8/18/2018 12:06:10 AM
Subject: FW: OMB Concludes Review of EPA Emissions Guidelines for GHGs from Existing Electric Utility Generating Unis NPRM - 2060-AT67
EO12866_GHG State Guidelines 2060-AT67 RIA_20180817_CLEAN_7pm.docx
EO12866_GHG State Guidelines 2060-AT67 RIA Spreadsheet_20180817_7pm.xlsx
EO12866_GHG State Guidelines 2060-AT67 preamble-rule_20180817_CLEAN_730pm.docx

We've cleared. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Whiteman, Chad S. EOP/OMB [mailto: **EOP / Ex. 6**]
Sent: Friday, August 17, 2018 7:58 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Elman, Barry <Elman.Barry@epa.gov>; Laity, Jim A. EOP/OMB < **EOP / Ex. 6** >
Subject: FW: OMB Concludes Review of EPA Emissions Guidelines for GHGs from Existing Electric Utility Generating Unis NPRM - 2060-AT67

Kevin,
OMB concludes EO 12866 review by email on the EPA proposed rule titled, "Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program," RIN 2060-AT67. **Deliberative Process / Ex. 5**
Best Regards,
Chad

Category	Estimates: Primary Estimate	Low Estimate	High Estimate	Units: Year Dollar	Discount Rate	Period Covered	Notes
Benefits							
Annualized Monetized ($billions/year)		-4.3	-1.5	2016	7%	2023-2037	The forgone benefit estimates in this summary table reflects forgone domestic impacts from CO2 emission changes and does not account for changes in non-CO2 GHG emissions. The forgone air quality health co-benefits reflect forgone reduced exposure to PM2.5 and ozone associated with forgone emission reductions of directly emitted PM2.5, SO2 and NOX. The range reflects the low and high end estimates of the three illustrative policy scenarios (i.e., 2% HRI at $50/kW, 4.5% HRI at $50/kW, and 4.5% at $100/kW) relative to a base case with the Clean Power Plan in place. The estimates are the Equivalent Annualized Value of the monetized benefits over the 2023-2037 period.
		-6.3	-2.3	2016	3%	2023-2037	
Annualized Quantified							
Qualitative	Benefits from nonmonetized climate affected, reduced direct exposure to SO2						
Costs							
Annualized Monetized		-0.4	0.2	2016	7%	2023-2037	The avoided compliance costs are approximated by the three illustrative policy cases estimated using the Integrated Planning Model for the final guidelines and a discount rate of approximately 5 percent. This estimate includes an estimate of value of monitoring, recordkeeping, and
		-0.5	0.3	2016	3%	2023-2037	
Annualized Quantified					7%		
					3%		
Qualitative							
Transfers							
Federal Annualized Monetized					7%		
					3%		None estimated.
From/To	From:			To:			
Other Annualized Monetized					7%		
					3%		None estimated.
From/To	From:			To:			
Effects							
State, Local, and/or Tribal Government	EPA has determined that this rule will not impose a federal mandate that may result in expenditures of $100 million o						
Small Business	The final rule will not impose any requirements on small entities. States, tribes and local governments will establish st						
Wages	No estimates available regarding changes in wages.						
Growth	We do not have any estimates provided regarding changes in economic growth associated with implementation of thi						

Category	Primary Estimate	Low Estimate	High Estimate	Year Dollar	Discount Rate	Period Covered	Notes
Benefits							
Annualized Monetized	0.0	0.0	0.0		7%		
($millions/year)	0.0	0.0	0.0		3%		
Annualized	0.0	0.0	0.0		7%		
Quantified	0.0	0.0	0.0		3%		
Qualitative							
Costs							
Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
Annualized	0.0	0.0	0.0		7%		
Quantified	0.0	0.0	0.0		3%		
Qualitative							
Transfers							
Federal Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
From/To	From:			To:			
Other Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
From/To	From:			To:			
Effects							
State, Local, and/or Tribal Government							
Small Business							
Wages							
Growth							

Worksheet												Present Values	
Number of years	1	**Years**											
		1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	7%	3%
Benefits													
Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Annualized	Primary											0.0	0.0
Quantified	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Costs													
Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Annualized	Primary											0.0	0.0
Quantified	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Transfers													
Federal Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Other Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0

($millions/year)	High											0.0	0.0

Example 1
PPS rule which increases Medicare payments to home health agencies by $250 million in 2005

Category	Estimates: Primary Estimate	Low Estimate	High Estimate	Units: Year Dollar	Discount Rate	Period Covered	Notes
Benefits							
Annualized							
Monetized	0.0	0.0	0.0		7%		
($millions/year)	0.0	0.0	0.0		3%		
Annualized	0.0	0.0	0.0		7%		
Quantified	0.0	0.0	0.0		3%		
Qualitative							
Costs							
Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
Annualized	0.0	0.0	0.0		7%		
Quantified	0.0	0.0	0.0		3%		
Qualitative							
Transfers							
Federal Annualized	250.0	0.0	0.0	2005	7%	2005	
Monetized	250.0	0.0	0.0	2005	3%	2005	
From/To	From:	Medicare		To:	Home Health Agencies		
Other Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
From/To	From:			To:			
Effects							
State, Local, and/or Tribal Government	N/A						
Small Business	N/A						
Wages	N/A						
Growth	N/A						

Worksheet												Present Values	
Number of years	1				**Years**								
		1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	7%	3%
Benefits													
Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Annualized	Primary											0.0	0.0
Quantified	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Costs													
Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Annualized	Primary											0.0	0.0
Quantified	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Transfers													
Federal Annualized	Primary	250										233.6	242.7
Monetized	Low											0.0	0.0

($millions/year)	High											0.0	0.0
Other Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0

Example 2

conditions of participation change which imposes a cost on providers of $100M (with a 15% uncertainty) in the first year and $30 million (10% uncertainty) for following years. Monetized benefits are $50M (15% uncertainty) in first year, growing by 10% p.a. Quantified benefits are a reduction in deaths due to infection of 100 the second year (uncertainty of 10%), growing by 10% per year. Qualititive benefits are an increase in provider flexibility and an unquantifiable increase in patient safety. Period covered is 5 years.

	Estimates			Units			
Category	Primary Estimate	Low Estimate	High Estimate	Year Dollar	Discount Rate	Period Covered	Notes
Benefits							
Annualized	60.3	51.2	69.3	2005	7%	2005-2009	
Monetized	60.7	51.6	69.8	2005	3%	2005-2009	
Annualized	88.9	80.0	97.7		7%		
Quantified	91.1	82.0	100.2		3%		Reduction in deaths d
Qualitative	Increased patient safety and increased provider flexibility						
Costs							
Annualized	46.0	41.4	50.6	2005	7%	2005-2009	
Monetized	44.8	40.4	49.3	2005	3%	2005-2009	
Annualized	0.0	0.0	0.0		7%		
Quantified	0.0	0.0	0.0		3%		
Qualitative							
Transfers							
Federal Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
From/To	From:			To:			
Other Annualized	0.0	0.0	0.0		7%		
Monetized	0.0	0.0	0.0		3%		
From/To	From:			To:			
Effects							
State, Local, and/or Tribal Government	N/A						
Small Business	N/A						
Wages	N/A						
Growth	N/A						

Worksheet													Present Values	
Number of years	5				**Years**									
		1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**		7%	3%
Benefits														
Annualized	Primary	50.0	55.0	60.5	66.6	73.2							247.1	278.0
Monetized	Low	42.5	46.8	51.4	56.6	62.2							210.1	236.3
($millions/year)	High	57.5	63.3	69.6	76.5	84.2							284.2	319.7
Annualized	Primary	0.0	100	110	121	133							364.3	417.2
Quantified	Low	0.0	90	99	109	120							327.9	375.5
($millions/year)	High	0.0	110	121	133	146							400.8	459.0
Costs														
Annualized	Primary	100	30	30	30	30							188.4	205.4
Monetized	Low	90	27	27	27	27							169.6	184.8
($millions/year)	High	110	33	33	33	33							207.3	225.9
Annualized	Primary												0.0	0.0
Quantified	Low												0.0	0.0
($millions/year)	High												0.0	0.0
Transfers														
Federal Annualized	Primary												0.0	0.0

Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0
Other Annualized	Primary											0.0	0.0
Monetized	Low											0.0	0.0
($millions/year)	High											0.0	0.0

To: Schwab, Justin[schwab.justin@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Dravis, Samantha
Sent: Wed 5/3/2017 4:48:27 PM
Subject: FW: Here is the latest draft of the CPP cost savings analysis.
cost_memo_draft_042417.docx
ATT00001.txt

Let's find some time to walk through this.

-----Original Message-----
From: McGartland, Al
Sent: Wednesday, May 03, 2017 12:46 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: Here is the latest draft of the CPP cost savings analysis.

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Woods, Clint
Sent: Fri 8/17/2018 7:33:14 PM
Subject: FW: Rule package including RIA with tables
Clean Preamble and Reg Existing EGU GHG Standard - 081718.docx
EO12866_GHG State Guidelines 2060-AT67 RIA Spreadsheet_20180817.xlsx
EO12866_GHG State Guidelines 2060-AT67 RIA_20180817_CLEAN.DOCX
EO12866_GHG State Guidelines 2060-AT67 RIA_20180817_RLSO.DOCX
RLSO Preamble and Reg Existing EGU GHG Standard - 081718.docx

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Culligan, Kevin
Sent: Friday, August 17, 2018 3:10 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>
Subject: FW: Rule package including RIA with tables

We just sent over the package. While there are many people who deserve lots of credit, on this last go round, the RIA team in particular put forth tremendous effort to get all the tables in.

Chad said that the only folks who have not fully cleared at this point are OMB and the EOP. He promised an update as soon as he had one.

From: Culligan, Kevin
Sent: Friday, August 17, 2018 3:04 PM
To: 'Whiteman, Chad S. EOP/OMB' <EOP / Ex. 6>
Cc: Elman, Barry <Elman.Barry@epa.gov>; Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>
Subject: Rule package including RIA with tables

- A RLSO of all the edits made in the preamble – Note that these edits are made on top of what we sent last night
- A clean version of the preamble
- A RLSO of the edits made to the RIA
- A clean version of the RIA
- The updated ROCIS spreadsheet

Changes are consistent with what we just discussed on the phone

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Lovell, Will (William)[lovell.william@epa.gov]
From: McGartland, Al
Sent: Mon 8/13/2018 8:30:31 PM
Subject: Fwd: Revised RIA Submitted
EO12866_GHG State Guidelines 2060-AT67 RIA_20180813 CLEAN.DOCX
ATT00001.htm

FYI.

Sent from my iPhone

Begin forwarded message:

From: "Marten, Alex" <Marten.Alex@epa.gov>
Date: August 13, 2018 at 3:45:53 PM EDT
To: "McGartland, Al" <McGartland.Al@epa.gov>
Cc: "Evans, DavidA" <Evans.DavidA@epa.gov>
Subject: Fwd: Revised RIA Submitted

just an fyi that the cpp ria went back to omb today. Current version attached.

—
Alex Marten

Begin forwarded message:

From: "Macpherson, Alex" <Macpherson.Alex@epa.gov>
To: "Evans, DavidA" <Evans.DavidA@epa.gov>, "Marten, Alex" <Marten.Alex@epa.gov>, "Adamantiades, Mikhail" <Adamantiades.Mikhail@epa.gov>, "Keaveny, Brian" <Keaveny.Brian@epa.gov>, "Eschmann, Erich" <Eschmann.Erich@epa.gov>, "Simon, Heather" <Simon.Heather@epa.gov>, "Fann, Neal" <Fann.Neal@epa.gov>, "Bryson, Joe" <Bryson.Joe@epa.gov>, "Ragnauth, Shaun" <Ragnauth.Shaun@epa.gov>, "Weatherhead, Darryl" <Weatherhead.Darryl@epa.gov>, "Langdon, Robin" <Langdon.Robin@epa.gov>, "Simon, Nathalie" <Simon.Nathalie@epa.gov>
Cc: "Thomas, Jenny" <Thomas.Jenny@epa.gov>
Subject: Revised RIA Submitted

All

Thanks for the hard push in the last few days. I really appreciate it, especially the folks who worked in evenings or weekends to get the job done well.

The clean version is attached...all the documents that got sent forward can be found in this directory:

Deliberative Process / Ex. 5

Thanks again and I'm sure B**Personal Matters / Ex. 6**) is grateful as well...
Alex

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: McGartland, Al[McGartland.Al@epa.gov]; Marten, Alex[Marten.Alex@epa.gov]
From: Evans, DavidA
Sent: Fri 8/10/2018 6:41:15 PM
Subject: CPP Replacement 8/7/18 OMB passback
EO12866 Review - EPA Existing EGU GHG State Guidelines - RIA 2060-AT67 - 8_7_2018.docx
EO12866 Review - EPA Existing EGU GHG State Guidelines 2060-AT67 NPRM - 8_7_2018.docx
EO12866 Review Summary Comments - EPA Existing EGU GHG State Guidelines 2060-AT67 NPRM - 8_7_2018.docx

Hi Brittany,

For your reference, attached are the materials that OMB passed back to EPA on 8/7/18. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Please let us know if you have any questions,

Dave

****

David A. Evans, Ph.D.
Economist
National Center for Environmental Economics
U.S. Environmental Protection Agency
O: 202-566-2358
C: Personal Phone / Ex. 6

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Schwab, Justin
Sent: Tue 12/19/2017 6:49:40 PM
Subject: Fwd: 28(j) letters filed in ozone designation delay litigation
State_Pets_28(j)_letter_12.18.17.PDF
ATT00001.htm
Enviro_Pets_28(j)_letter_12.18.17.PDF
ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Bianco, Karen" <Bianco.Karen@epa.gov>
To: "Schwab, Justin" <Schwab.Justin@epa.gov>
Cc: "Smith, Kristi" <Smith.Kristi@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Subject: 28(j) letters filed in ozone designation delay litigation

Hello Justin,

Deliberative Process / attorney work product Ex. 5

DOJ would like to file a response to **Deliberative Process / attorney work product Ex. 5**

Deliberative Process / attorney work product Ex. 5

Please let me know if you have any concerns with this approach.

Karen Bennett Bianco | U.S. Environmental Protection Agency
Attorney-Adviser | Office of General Counsel | WJCN 7426X | 202-564-3298

EARTHJUSTICE ALASKA -PACIFIC NORTHWEST

December

Mark
Clerk
U.S. strict
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Washington,

Re: *American Lung Association v. EPA*,
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https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2060-AS82 *see also*
https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2060

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Respectfully

/s/Seth
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David
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sjohnson@earthjustice.org
ldumais@earthjustice.org
dbaron@earthjustice.org

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Social Responsibility, Sierra Club, and West Harlem Environmental Action

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Counsel for Environmental Law and Policy Center

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gmccahan@edf.org
rfullmer@edf.org

Counsel for Environmental Defense Fund

CERTIFICATE

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/s/Seth
Seth

ATTACHMENT

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

OVERVIEW

The U.S. Environmental Protection Agency (EPA) administers the laws enacted by Congress and signed by the President to protect people's health and the environment. In carrying out these statutory mandates, the EPA works to ensure that all Americans are protected from significant risks to human health and the environment where they live, learn and work; that national efforts to reduce environmental risk are based on the best available scientific information; that Federal laws protecting human health and the environment are enforced fairly and effectively; that environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental policy; that all parts of society-communities, individuals, businesses, and State, local and tribal governments-have access to accurate information sufficient to effectively participate in managing human health and environmental risks; that environmental protection contributes to making our communities and ecosystems diverse, sustainable and economically productive; and, that the United States plays a leadership role in working with other nations to protect the global environment.

To accomplish its goals in the coming year, the EPA will use regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance and tools, and research and educational initiatives to address its statutory responsibilities. All of this work will be undertaken with a strong commitment to science, law and transparency.

HIGHLIGHTS OF EPA'S REGULATORY PLAN

EPA's more than forty years of protecting public health and the environment demonstrates our nation's commitment to reducing pollution that can threaten the air we breathe, the water we use, and the communities we live in. This Regulatory Plan contains information on some of our most important upcoming regulatory and deregulatory actions. As always, our Semiannual Regulatory Agenda contains information on a broader spectrum of EPA's upcoming regulatory actions.

Improving Air Quality

The Agency will continue to deploy existing regulatory tools where appropriate and warranted. Using the Clean Air Act, EPA will work with States to accurately measure air quality and ensure that more Americans are living and working in areas that meet air quality standards. EPA will continue to develop standards, as directed by the Clean Air Act, for both mobile and stationary sources, to reduce emissions of sulfur dioxide, particulate matter, nitrogen oxides, toxics, and other pollutants.

Electric Utility Sector Greenhouse Gas Rules

The EPA will continue its review of the Clean Power Plan suite of actions issued by the previous administration affecting fossil fuel-fired electric generating units (EGUs). On October 23, 2015, the EPA issued a final rule that established first-ever standards for States to follow in developing plans to reduce carbon dioxide (CO2) emissions from existing fossil fuel-fired EGUs. On the same day, the EPA issued a final rule establishing CO2 emissions standards for newly constructed, modified, and reconstructed fossil fuel fired EGUs. The Agency will reevaluate whether these rules and alternative approaches are appropriately grounded in EPA's statutory authority and consistent with the rule of law. EPA will assess whether these rules or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the States; whether these rules and alternative approaches affect the Administration's dual goals of protecting public health and welfare, while also supporting economic growth and job creation; and whether these rules or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security.

Light-duty Vehicle Mid-Term Evaluation

In 2012, as part of a joint rulemaking, the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) finalized separate sets of standards under their respective statutory authorities. The EPA set GHG emission standards (including standards for emissions of CO2, NOx, methane, and air conditioning refrigerants) for Model Year (MY) 2017-2025 passenger cars and light-trucks under Clean Air Act (CAA) section 202(a). NHTSA sets national CAFE standards under the Energy Policy and Conservation Act (EPCA) for MY 2017-2021 light-duty vehicles and issued augural standards for MY 2022-2025. The 2012 joint rulemaking establishing these standards included a regulatory requirement for the EPA to conduct a Mid-Term Evaluation of the GHG standards established for MY 2022-2025. In July 2016, the EPA, NHTSA, and the California Air Resources Board (CARB) released for public comment a jointly prepared Draft Technical Assessment Report, which examined a range of issues relevant to GHG emissions and CAFE standards for MY 2022-2025.

Under the 2012 joint rulemaking regulations, no later than April 1, 2018, the EPA Administrator must determine whether the GHG standards established under the 2012 joint rule for MY 2022-2025 are appropriate under CAA section 202(a) in light of the record then before the Administrator. Given that CO2 makes up the vast majority of the GHGs that the EPA regulates under section 202(a), and given that the technologies available for regulating CO2 emissions do so by improving fuel economy (which NHTSA regulates under EPCA), NHTSA's views regarding their CAFE standards is an appropriate consideration in EPA's determination regarding what GHG standards would be appropriate under the CAA.

In accordance with the schedule set forth in the EPA's regulations, the EPA intends to make a Final Determination regarding the appropriateness of the MY 2022-2025 GHG standards no later than April 1, 2018. As a part of this process, the EPA is examining a wide range of factors, such as developments in powertrain technology, vehicle electrification, light-weighting and vehicle safety impacts, the penetration of fuel efficient technologies in the marketplace, consumer acceptance of fuel efficient technologies, trends in fuel prices and the vehicle fleet, employment impacts, and many others.

New Source Review and Title V Permitting Programs Reform

The CAA establishes a number of permitting programs designed to carry out the goals of the Act. The EPA directly implements some of these programs through its regional offices, but most are carried out by States, local agencies, and approved tribes. New Source Review (NSR) is a preconstruction permitting program that ensures that the addition of new and modified sources does not significantly degrade air quality. NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source may be operated. There are three types of NSR permits: (1) Prevention of Significant Deterioration (PSD) (CAA part C) permits, which are required for new major sources or a major source making a major modification in an attainment area; (2) Nonattainment NSR (NNSR) (CAA part D) permits, which are required for new major sources or major sources making a major modification in a nonattainment area; and (3) Minor source permits (CAA section 110(a)(2)(C)).

CAA title V requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit. Sources with these "title V permits" are required by the CAA to certify compliance with the applicable requirements of their permits at least annually. Regulations governing the Title V program are found at 40 CFR part 70 - State Operating Permit Programs.

To improve program effectiveness and reduce compliance burden, the EPA will examine permitting programs reforms, such as the timely issuance of permits, the facilitation of flexibility in permitting in a nationally consistent manner (including but not limited to plant-wide applicability limits (PALs) and alternative operating scenarios), and the simplification of CAA permitting requirements by evaluating and pursuing appropriate actions related to actual-to-projected-actual applicability test, project netting rulemaking, debottlenecking, and routine maintenance, repair, and replacement.

The EPA plans to complete the following actions: GHG Significant Emission Rate rulemaking, which will provide a significance threshold for GHG emissions to determine when a best available control technology (BACT) analysis is required; improve the technical tools used to streamline air quality modeling by issuing final PM2.5 and Ozone Significant Impact Levels (SILs) Guidance, and final Modeled Emissions Rates for Precursors (MERPs) Guidance; and title V Permitting Program Petition Provisions Modification.

Ozone National Ambient Air Quality Standard (NAAQS) Implementation Revisions

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary Ozone NAAQS. The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard.

Subsequently, stakeholders have recommended that the EPA further revise the exceptional event rule and associated guidance to allow for greater state flexibility in flagging and excluding exceptional events in the data set used to determine compliance with the NAAQS. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, State, or local air agencies may implement in order to attain and maintain the NAAQS. Exceptional events include wildfires, stratospheric ozone intrusions, and volcanic and seismic activities. In September 2016, the EPA finalized revisions to the Exceptional Events rule to establish criteria and procedures for use in determining exceptional events influenced air quality monitoring data.

In addition, the EPA intends to use the additional time afforded by the designations extension to finalize necessary guidance (e.g., updated exceptional events guidance and guidance on Significant Impact Levels (SILs) and Model Emission Rates for Precursors (MERPs), as well as to finalize its 2015 Ozone NAAQS Implementation rule.

Improving Water Quality

Since the enactment of the Clean Water Act and the Safer Drinking Water Act, tremendous progress has been made toward ensuring that Americans have safe water to drink and generally improving the quality of the Nation's waters. While progress has been made, numerous challenges remain in such areas as nutrient loadings, storm water runoff, invasive species and drinking water contaminants. These challenges can only be addressed by working with our State and tribal partners to develop new and innovative strategies in addition to the more traditional regulatory approaches. EPA plans to address the following challenging issues in rulemakings.

Waters of the U.S.

The Clean Water Act (CWA) seeks "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Among other provisions, the CWA regulates the discharge of pollutants into "navigable waters," defined in the CWA as "the waters of the United States." The question of what is a "water of the United States" is one that has generated substantial interest and uncertainty, especially among states, small businesses, the agricultural communities, and environmental organizations, because it relates to the extent of jurisdiction for Federal and relevant State regulations.

The EPA and the Department of the Army have promulgated a series of regulations defining "waters of the United States." The scope of "waters of the United States" as defined by prior regulations has been subject to litigation in several U.S. Supreme Court cases, most recently in its 2006 *Rapanos* decision. Subsequently, the EPA and the Corp of Engineers issued the "Clean Water Rule: Definition of 'Waters of the United States.'" (2015 WOTUS Rule.) On October 9, 2015, the Sixth Circuit stayed the 2015 WOTUS rule nationwide pending further action of the court.

On July 27, 2017, the EPA and the Army issued a proposed rulemaking to repeal the 2015 WOTUS rule and reinstate the regulations in place prior to its issuance. As indicated in the proposed withdrawal, the agencies are implementing clarifying changes in two steps to provide as much certainty as possible as quickly as possible to

the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are seeking to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 WOTUS Rule. Currently, these prior regulations are being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the 2015 rule. In step 2, the agencies plan to propose a new definition that would replace the prior regulations and the approach in the 2015 Clean Water Rule. In determining the possible new approaches, EPA and the Corps of Engineers are considering a definition for "navigable water" in a manner consistent with the plurality opinion of Justice Antonin Scalia in the *Rapanos* decision as instructed by Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

On November 3, 2015, under the authority of the CWA, the EPA issued a final rule amending the Effluent Limitations Guidelines (ELG) and Standards for the Steam Electric Power Generating Point Source Category (i.e., 2015 Steam Electric ELG). The amendments addressed and contained limitations and standards on various waste streams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate. EPA recently received two administrative petitions for reconsideration of the Steam Electric ELG rule, one from the Utility Water Act Group (a petitioner in the litigation) and one from the Small Business Administration Office of Advocacy. In a letter dated April 12, 2017, Administrator Pruitt informed the petitioners of his decision that it is appropriate and in the public interest to reconsider the rule. On April 25, 2017, EPA published a Federal Register notice issuing an administrative stay of the compliance dates in the rule that have not yet passed, pending judicial review, under section 705 of the Administrative Procedure Act. In addition, because Section 705 of the APA authorizes an Agency to postpone the effective date of an action pending judicial review, EPA issued a proposed rule on June 6, 2017 to postpone certain compliance dates in the rule in the event that the litigation ends, and while the Agency is undertaking reconsideration. On August 11, 2017 the Administrator announced his decision to conduct a rulemaking to potentially revise the new, more stringent BAT effluent limitations and pretreatment standards for existing sources in the 2015 rule that apply to bottom ash transport water and flue gas desulfurization (FGD) wastewater. In light of the reconsideration, EPA views that it is appropriate to postpone impending deadlines as a temporary, stopgap measure to prevent the unnecessary expenditure of resources until it completes reconsideration of the 2015 rule. Thus, the Administrator signed a final rule on September 9, 2017 postponing the earliest compliance dates for the BAT effluent limitations and PSES for bottom ash transport water and FGD wastewater in the 2015 Rule, from November 1, 2018 to November 1, 2020. This rule also withdraws EPA's notification of Postponement of Certain Compliance Dates under Section 705 of the Administrative Procedures Act that was published on April 25, 2017.

National Primary Drinking Water Regulations for Lead and Copper

The Lead and Copper Rule (LCR) reduces risks to drinking water consumers from lead and copper that can enter drinking water as a result of corrosion of plumbing materials. The LCR requires water systems to sample at taps in homes with leaded plumbing materials. Depending upon the sampling results, water systems must take actions to reduce exposure to lead and copper including corrosion control treatment, public education, and lead service line replacement. The LCR was promulgated in 1991 and, overall, has been effective in reducing the levels of lead and copper in drinking water systems across the country. However, lead crises in Washington, DC, and in Flint, Michigan, and the subsequent national attention focused on lead in drinking water in other communities have underscored significant challenges in the implementation of the current rule, including a rule structure that, for many systems, only compels protective actions after public health threats have been identified. Key challenges include the rule's complexity; the degree of flexibility and discretion it affords systems and primacy states with regard to optimization of corrosion control treatment; compliance sampling practices, which in some cases, may not adequately protect from lead exposure; and limited specific focus on key areas of concern such as schools. There is a compelling need to modernize and strengthen implementation of the rule-to strengthen its public health protections and to clarify its implementation requirements to make it more effective and more

readily enforceable. EPA is evaluating the costs and benefits of the potential revisions and assessing whether the benefits justify the costs

Cleaning Up Communities and Advancing Sustainable Development

EPA's regulatory program recognizes the progress in environmental protection and incorporates new technologies and approaches that allow us to provide for an environmentally sustainable future more efficiently and effectively.

Coal Combustion Residuals (CCR) Review

On April 17, 2015, the EPA promulgated a final rule that establishes minimum national criteria under subtitle D of the Resource Conservation and Recovery Act (RCRA) for Coal Combustion Residuals (CCR) landfills and surface impoundments at active coal fired power plants. The rule regulates surface impoundments and landfills that are actively accruing CCR, inactive surface impoundments still containing CCRs, and water both at operating power plants actively burning coal and those that burned coal in the past but have transitioned to use of an alternate fuel source. The requirements of the rule included: location restrictions (floodplains, wetlands, unstable areas, etc.); design criteria (liners, structural integrity criteria); operating criteria (e.g., run-on and runoff controls, inspections, fugitive dust controls); groundwater monitoring and corrective action; closure and post-closure care (e.g., final cover systems, 30 years of groundwater monitoring); and recordkeeping. At the time the final CCR rule was issued under subtitle D of RCRA, the EPA did not have the authority to enforce these criteria nor was the EPA authorized to approve state permit programs, as is the case for municipal solid waste landfills. Instead, the requirements of the CCR rule are directly applicable to owner/operators of facilities where disposal units are located and can be enforced via citizen suit or under the "imminent and substantial danger" authority of RCRA section 7002. Owner/operators are required under the rule to place notifications in their operating record, on their Web site, and in some instances provide notice to the directors of appropriate State agencies documenting the measures taken to comply with the rule.

The 2015 CCR Rule does not make a final Bevill regulatory determination as to whether CCRs warrant regulation as a hazardous waste under subtitle C of RCRA, but instead defers a final regulatory determination until the EPA has more information on specific matters influencing the risks posed by CCRs.

Subsequent to the promulgation of the 2015 CCR Rule, various environmental and industry groups submitted to the D.C. Circuit seven separate petitions for review, which were consolidated into a single action. On June 16, 2016, in response to the EPA's unopposed motion for voluntary remand of certain issues, the D.C. Circuit issued an order remanding with vacatur to the EPA specific provisions of the rule for further consideration, and remanding without vacatur other issues. The EPA will consider the provisions remanded by the D.C. Circuit, as well as the issues raised in the 2017 petition and other implementation issues subsequently raised by stakeholders.

Reconsideration of the Accidental Release Prevention Regulations under Clean Air Act

Both EPA and the Occupational Safety & Health Administration (OSHA) issued regulations, as required by the Clean Air Act Amendments of 1990, in response to a number of catastrophic chemical accidents occurring worldwide that had resulted in public and worker fatalities and injuries, environmental damage, and other community impacts. OSHA published the Process Safety Management (PSM) standard (29 CFR part 1910.119) in 1992. EPA modeled the Risk Management Program (RMP) regulation after OSHA's PSM standard and published the RMP rule in two stages-a list of regulated substances and threshold quantities in 1994; and the RMP final regulation, containing risk management requirements, in 1996. Both the OSHA PSM standard and the EPA RMP regulation aim to prevent, or minimize the consequences of, accidental chemical releases to workers and the community.

On January 13, 2017, the EPA amended the RMP regulations in order to (1) reduce the likelihood and severity of accidental releases, (2) improve emergency response when those releases occur, and (3) enhance State and local emergency preparedness and response in an effort to mitigate the effects of accidents.

Having considered the objections to the RMP Amendments rule raised in various petitions, the EPA subsequently delayed the effective date of the RMP Amendments rule to February 19, 2019, in order to give the EPA time to reconsider the rule. Prior to the rule becoming effective, the EPA plans to take comment on specific issues to be reconsidered and consider possible regulatory actions to revise the RMP amendments.

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues from Electric Utilities: Remand Rule

The EPA is planning to modify the final rule on the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act issued on April 17, 2015 (80 FR 21302). As a result of a settlement agreement on this final rule, the EPA is addressing specific technical issues remanded by the court. Further, the Water Infrastructure Improvements for the Nation Act of 2016 established new statutory provisions applicable to CCR units, including authorizing States to implement the CCR rule through an EPA-approved permit program and authorizing the EPA to enforce the rule. The EPA is considering amending certain performance standards in the CCR rule to offer additional flexibility to State permitting authorities with approved programs.

Clean Water Act Hazardous Substances Spill Prevention

As a result of a consent decree, the EPA is pursuing a rulemaking for the prevention of hazardous substance discharges under the Clean Water Act (CWA). The CWA hazardous substances and their associated reportable quantities (RQs) are identified in 40 CFR parts 116 and 117, respectively. The EPA will assess the consequences of hazardous substance discharges into the Nation's waters, and evaluate the costs and benefits of potential preventive regulatory requirements for facilities handling such substances.

Ensuring the Safety of Chemicals and Preventing Pollution

EPA acts under several different statutory authorities, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Food, Drug and Cosmetic Act (FFDCA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know-Act (EPCRA), and the Pollution Prevention Act (PPA) to protect individuals, families, and the environment from potential risks of pesticides and other chemicals. Using sound science as a compass, the Agency will continue to satisfy its overall directives under these authorities and highlights the following efforts underway in FY 2018:

Frank R. Lautenberg Chemical Safety for the 21st Century Act Implementation. Enacted on June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act amended TSCA with immediate effect. The Agency is working aggressively to carry out the requirements of the new law. Among other things, EPA is now required to evaluate existing chemicals purely on the basis of the health risks they pose-including risks to vulnerable groups and to workers who may use chemicals daily as part of their jobs. If unreasonable risks are found, EPA must then take steps to eliminate these risks. In June 2017, EPA released scope documents for the initial ten chemicals for risk evaluation under the amended law. These documents identify what uses of the chemicals will be evaluated and how the risk evaluation will be conducted. In FY 2018, EPA will publish and take public comment on Problem Formulation documents which will refine the current scope of the risk evaluations prior to publication the draft risk evaluations in FY 2019.

EPA is also now required to systematically prioritize and evaluate chemicals on a specific and enforceable schedule. Within a few years, EPA's chemicals program will have to assess at least 20 chemicals at a time, beginning another chemical review as soon as one is completed. In June 2017, EPA promulgated final framework regulations addressing the procedures that EPA will employ to prioritize chemicals under TSCA for risk evaluation, as well as the procedures that EPA will follow to evaluate the risks of chemicals procedures. EPA also promulgated a final rule, per statutory requirements, to require chemical manufacturers to report on TSCA chemicals they have manufactured (including imported) within the past 10 years. Although the framework regulations did not formally establish an approach to identify how chemicals will be selected as candidates for low- or high-priority designation, EPA will initiate a stakeholder process in FY 2018 with the objective of identifying approaches for bringing TSCA chemicals into the prioritization process. EPA will

subsequently determine whether to amend the procedural regulations in consideration of the information obtained during the stakeholder process.

The new law also authorizes EPA cover a portion of its annual TSCA program costs by collecting user fees from chemical manufacturers and processors when they: submit test data for EPA review, submit a premanufacture notice for a new chemical or a notice of new use, manufacture or process a chemical substance that is the subject of a risk evaluation, or request that EPA conduct a chemical risk evaluation. The proposal and finalization of a fees rule is an EPA priority in FY 2018.

Finally, the new law requires EPA to promulgate by June 22, 2018 a final rule that establishes reporting requirements to facilitate the update of the inventory of the supply, trade, and use of mercury in the United States. EPA will issue a proposed rule in early FY 2018 and promulgate the final rule on or before the statutory deadline.

Reconsideration of Pesticide Safety Requirements

In FY 2017, EPA solicited comments this spring on regulations that may be appropriate for repeal, replacement, or modification in keeping with Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda." EPA also held a public meeting of the Pesticide Program Dialogue Committee in May 2017 that included session specifically devoted to receiving public feedback on potential pesticide regulatory reform opportunities for EPA's Regulatory Reform Task Force to consider. Although many commenters expressed their support for EPA's pesticide safety regulations, EPA also received comments that suggested specific changes to the January 4, 2017, Certification of Pesticide Applicators final rule (amending the requirements at 40 CFR 171) and to the November 2, 2015, Worker Protection Standard final rule (which amended the regulations at 40 CFR 170). EPA expects to publish separate Notices of Proposed Rulemaking in FY 2018 to solicit public input on revisions to these rules.

Annual Regulatory Costs

Section 3 of Executive Order 13771 (82 FR 9339, February 3, 2017) calls on agencies to "identify for each regulation that increases incremental cost, the offsetting regulations...and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation." Each action in EPA's fall 2017 Regulatory Plan and Semiannual Regulatory Agenda contains information about whether an action is anticipated to be "regulatory" or "deregulatory" in fulfilling this executive directive. Based on current schedules and expectations regarding whether or not regulatory actions are subject to Executive Order 12866 and hence Executive Order 13771, in fiscal year 2018, EPA is planning on finalizing over 30 deregulatory actions and fewer than 10 regulatory actions. EPA expects the combined cost savings of its planned deregulatory actions to far outweigh the costs of its planned regulatory actions.

Rules Expected to Affect Small Entities

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. Actions that may affect small entities can be tracked on EPA's Regulatory Flexibility Web site (https://www.epa.gov/reg-flex) at any time. This Plan includes the following rules that may be of particular interest to small entities:

Rulemaking Title	Regulatory Identifier Number (RIN)
Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry	2050-AG61
National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040-AF15

ATTACHMENT

RIN Data

EPA/OAR **RIN:** 2060-AS82 **Publication ID:** Fall 2017

Title: Implementation of the 2015 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements

Abstract:

This final rule will address implementation requirements for the 2015 National Ambient Air Quality Standards (NAAQS) for ozone and the timing of State Implementation Plan (SIP) submissions. It will also discuss and outline relevant guidance on meeting the Clean Air Act's requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control measures, nonattainment new source review, and emission inventories. Other issues addressed in this rule are the potential revocation of the 2008 ozone NAAQS and anti-backsliding requirements that would apply in certain areas if the 2008 NAAQS were revoked.

Agency: Environmental Protection Agency(EPA)
Priority: Other Significant
RIN Status: Previously published in the Unified Agenda
Agenda Stage of Rulemaking: Long-Term Actions
Major: No
Unfunded Mandates: No
EO 13771 Designation: Other
CFR Citation: 40 CFR 50 40 CFR 51
Legal Authority: 23 U.S.C. 101 42 U.S.C. 7401 to 7671q
Legal Deadline: None
Timetable:

Action	Date	FR Cite
NPRM	11/17/2016	81 FR 81276
NPRM Comment Period Extended	12/19/2016	81 FR 91894
NPRM Comment Period Extended End	02/13/2017	
Final Rule	To Be Determined	

Additional Information: Docket #:EPA-HQ-OAR-2016-0202
Regulatory Flexibility Analysis Required: No
Government Levels Affected: Federal, Local, State, Tribal
Small Entities Affected: No
Federalism: No
Included in the Regulatory Plan: No
RIN Data Printed in the FR: No

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ATTACHMENT

RIN Data

EPA/OAR **RIN:** 2060-AT41 **Publication ID:** Fall 2017

Title: Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach

Abstract:

This action will establish the air quality thresholds that define the classifications assigned to areas for the 2015 ozone national ambient air quality standards and will establish the attainment deadlines associated with each of the area classifications.

Agency: Environmental Protection Agency(EPA)
Priority: Other Significant
RIN Status: Previously published in the Unified Agenda
Agenda Stage of Rulemaking: Long-Term Actions
Major: No
Unfunded Mandates: No
EO 13771 Designation: Other
CFR Citation: 40 CFR 51
Legal Authority: 42 U.S.C. 7401 to 7671q
Legal Deadline: None

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Additional Information: Docket #:EPA-HQ-OAR-2016-0202
Regulatory Flexibility Analysis Required: No
Government Levels Affected: Federal, Local, State, Tribal
Small Entities Affected: No
Federalism: No
Included in the Regulatory Plan: No
RIN Data Printed in the FR: No

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DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

December 18, 2017

BY CM/ECF

Hon. Mark Langer
Clerk of Court
U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse &
William B. Bryant Annex
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: State of New York, et al. v. United States Environmental Protection Agency, et al. (D.C. Cir. Case No. 17-1185, consolidated with Case Nos. 17-1172 and 17-1187)

Dear Mr. Langer,

Pursuant to Federal Rule of Appellate Procedure 28(j), the undersigned State Petitioners submit this letter to apprise the Court of recent developments further demonstrating the need for the Court to reach the merits of State Petitioners' challenge to EPA's extension of the statutory deadline to issue designations for 2015 ozone national ambient air quality standards (NAAQS). 82 Fed. Reg. 29,246. EPA represented to the Court that its unilateral withdrawal of the extension (82 Fed. Reg. 37,318) mooted the case. However, in EPA's just-released "Fall 2017 Agency Statement of Regulatory Priorities," EPA indicates that it understands the supposedly withdrawn extension to still be effective.

Discussing the 2015 ozone NAAQS designations, EPA states it "intends to use the additional time afforded by the designations extension" to complete tasks that are unrelated to the statutory bases for a NAAQS extension.[1] Likewise, in an abstract describing air-quality designations for the 2015 ozone NAAQS, EPA states that it "extended the deadline" to make designations "to October 1, 2018."[2] Moreover, EPA does not list the outstanding 2015 ozone designations as agency actions likely to occur in the next year,[3] or even as long-term agency actions.[4] Copies of the relevant materials from the EPA website, as they existed on December 15, 2017, are attached to this letter.

EPA's statement that it considers the designation extension to still be effective directly contradicts its assertion to this Court that the extension "is a nullity and there is no way in which it could be made effective again." EPA Response to Motions to Govern, ECF#1704703 at 2; *see* EPA Response to FRAP 28(j) Letter, ECF#1702006 at 1 (the designations extension "has been withdrawn and is thus a nullity"). Because EPA cannot meet its "heavy burden" to show "the challenged conduct cannot reasonably be expected to start up again," *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000), this case presents a live controversy that this Court should resolve. This Court should summarily vacate the designations extension and make clear that the bases for the extension are illegal.

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[1] https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement_2000.html

[2] https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2060-AT33

[3] https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=2000&Image58.x=53&Image58.y=18&Image58=Submit

[4] https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPubId=201710&showStage=longterm&agencyCd=2000&Image58.x=26&Image58.y=18&Image58=Submit

Respectfully submitted,

FOR THE STATE OF NEW YORK

cc: All Counsel
(via ECF)

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ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

OVERVIEW

The U.S. Environmental Protection Agency (EPA) administers the laws enacted by Congress and signed by the President to protect people's health and the environment. In carrying out these statutory mandates, the EPA works to ensure that all Americans are protected from significant risks to human health and the environment where they live, learn and work; that national efforts to reduce environmental risk are based on the best available scientific information; that Federal laws protecting human health and the environment are enforced fairly and effectively; that environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade, and these factors are similarly considered in establishing environmental policy; that all parts of society-communities, individuals, businesses, and State, local and tribal governments-have access to accurate information sufficient to effectively participate in managing human health and environmental risks; that environmental protection contributes to making our communities and ecosystems diverse, sustainable and economically productive; and, that the United States plays a leadership role in working with other nations to protect the global environment.

To accomplish its goals in the coming year, the EPA will use regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance and tools, and research and educational initiatives to address its statutory responsibilities. All of this work will be undertaken with a strong commitment to science, law and transparency.

HIGHLIGHTS OF EPA'S REGULATORY PLAN

EPA's more than forty years of protecting public health and the environment demonstrates our nation's commitment to reducing pollution that can threaten the air we breathe, the water we use, and the communities we live in. This Regulatory Plan contains information on some of our most important upcoming regulatory and deregulatory actions. As always, our Semiannual Regulatory Agenda contains information on a broader spectrum of EPA's upcoming regulatory actions.

Improving Air Quality

The Agency will continue to deploy existing regulatory tools where appropriate and warranted. Using the Clean Air Act, EPA will work with States to accurately measure air quality and ensure that more Americans are living and working in areas that meet air quality standards. EPA will continue to develop standards, as directed by the Clean Air Act, for both mobile and stationary sources, to reduce emissions of sulfur dioxide, particulate matter, nitrogen oxides, toxics, and other pollutants.

Electric Utility Sector Greenhouse Gas Rules

The EPA will continue its review of the Clean Power Plan suite of actions issued by the previous administration affecting fossil fuel-fired electric generating units (EGUs). On October 23, 2015, the EPA issued a final rule that established first-ever standards for States to follow in developing plans to reduce carbon dioxide (CO2) emissions from existing fossil fuel-fired EGUs. On the same day, the EPA issued a final rule establishing CO2 emissions standards for newly constructed, modified, and reconstructed fossil fuel fired EGUs. The Agency will reevaluate whether these rules and alternative approaches are appropriately grounded in EPA's statutory authority and consistent with the rule of law. EPA will assess whether these rules or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the States; whether these rules and alternative approaches affect the Administration's dual goals of protecting public health and welfare, while also supporting economic growth and job creation; and whether these rules or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security.

In 2012, as part of a joint rulemaking, the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) finalized separate sets of standards under their respective statutory authorities. The EPA set GHG emission standards (including standards for emissions of CO2, NOx, methane, and air conditioning refrigerants) for Model Year (MY) 2017-2025 passenger cars and light-trucks under Clean Air Act (CAA) section 202(a). NHTSA sets national CAFE standards under the Energy Policy and Conservation Act (EPCA) for MY 2017-2021 light-duty vehicles and issued augural standards for MY 2022-2025. The 2012 joint rulemaking establishing these standards included a regulatory requirement for the EPA to conduct a Mid-Term Evaluation of the GHG standards established for MY 2022-2025. In July 2016, the EPA, NHTSA, and the California Air Resources Board (CARB) released for public comment a jointly prepared Draft Technical Assessment Report, which examined a range of issues relevant to GHG emissions and CAFE standards for MY 2022-2025.

Under the 2012 joint rulemaking regulations, no later than April 1, 2018, the EPA Administrator must determine whether the GHG standards established under the 2012 joint rule for MY 2022-2025 are appropriate under CAA section 202(a) in light of the record then before the Administrator. Given that CO2 makes up the vast majority of the GHGs that the EPA regulates under section 202(a), and given that the technologies available for regulating CO2 emissions do so by improving fuel economy (which NHTSA regulates under EPCA), NHTSA's views regarding their CAFE standards is an appropriate consideration in EPA's determination regarding what GHG standards would be appropriate under the CAA.

In accordance with the schedule set forth in the EPA's regulations, the EPA intends to make a Final Determination regarding the appropriateness of the MY 2022-2025 GHG standards no later than April 1, 2018. As a part of this process, the EPA is examining a wide range of factors, such as developments in powertrain technology, vehicle electrification, light-weighting and vehicle safety impacts, the penetration of fuel efficient technologies in the marketplace, consumer acceptance of fuel efficient technologies, trends in fuel prices and the vehicle fleet, employment impacts, and many others.

New Source Review and Title V Permitting Programs Reform

The CAA establishes a number of permitting programs designed to carry out the goals of the Act. The EPA directly implements some of these programs through its regional offices, but most are carried out by States, local agencies, and approved tribes. New Source Review (NSR) is a preconstruction permitting program that ensures that the addition of new and modified sources does not significantly degrade air quality. NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source may be operated. There are three types of NSR permits: (1) Prevention of Significant Deterioration (PSD) (CAA part C) permits, which are required for new major sources or a major source making a major modification in an attainment area; (2) Nonattainment NSR (NNSR) (CAA part D) permits, which are required for new major sources or major sources making a major modification in a nonattainment area; and (3) Minor source permits (CAA section 110(a)(2)(C)).

CAA title V requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit. Sources with these "title V permits" are required by the CAA to certify compliance with the applicable requirements of their permits at least annually. Regulations governing the Title V program are found at 40 CFR part 70 - State Operating Permit Programs.

To improve program effectiveness and reduce compliance burden, the EPA will examine permitting programs reforms, such as the timely issuance of permits, the facilitation of flexibility in permitting in a nationally consistent manner (including but not limited to plant-wide applicability limits (PALs) and alternative operating scenarios), and the simplification of CAA permitting requirements by evaluating and pursuing appropriate actions related to actual-to-projected-actual applicability test, project netting rulemaking, debottlenecking, and routine maintenance, repair, and replacement.

The EPA plans to complete the following actions: GHG Significant Emission Rate rulemaking, which will provide a significance threshold for GHG emissions to determine when a best available control technology (BACT) analysis is required; improve the technical tools used to streamline air quality modeling by issuing final PM2.5 and Ozone

Significant Impact Levels (SILs) Guidance; and final Modeled Emissions Rates for Precursors (MERPs) Guidance; and title V Permitting Program Petition Provisions Modification.

Ozone National Ambient Air Quality Standard (NAAQS) Implementation Revisions

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary Ozone NAAQS. The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard.

Subsequently, stakeholders have recommended that the EPA further revise the exceptional event rule and associated guidance to allow for greater state flexibility in flagging and excluding exceptional events in the data set used to determine compliance with the NAAQS. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, State, or local air agencies may implement in order to attain and maintain the NAAQS. Exceptional events include wildfires, stratospheric ozone intrusions, and volcanic and seismic activities. In September 2016, the EPA finalized revisions to the Exceptional Events rule to establish criteria and procedures for use in determining exceptional events influenced air quality monitoring data.

In addition, the EPA intends to use the additional time afforded by the designations extension to finalize necessary guidance (e.g., updated exceptional events guidance and guidance on Significant Impact Levels (SILs) and Model Emission Rates for Precursors (MERPs), as well as to finalize its 2015 Ozone NAAQS Implementation rule.

Improving Water Quality

Since the enactment of the Clean Water Act and the Safer Drinking Water Act, tremendous progress has been made toward ensuring that Americans have safe water to drink and generally improving the quality of the Nation's waters. While progress has been made, numerous challenges remain in such areas as nutrient loadings, storm water runoff, invasive species and drinking water contaminants. These challenges can only be addressed by working with our State and tribal partners to develop new and innovative strategies in addition to the more traditional regulatory approaches. EPA plans to address the following challenging issues in rulemakings.

Waters of the U.S.

The Clean Water Act (CWA) seeks "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Among other provisions, the CWA regulates the discharge of pollutants into "navigable waters," defined in the CWA as "the waters of the United States." The question of what is a "water of the United States" is one that has generated substantial interest and uncertainty, especially among states, small businesses, the agricultural communities, and environmental organizations, because it relates to the extent of jurisdiction for Federal and relevant State regulations.

The EPA and the Department of the Army have promulgated a series of regulations defining "waters of the United States." The scope of "waters of the United States" as defined by prior regulations has been subject to litigation in several U.S. Supreme Court cases, most recently in its 2006 *Rapanos* decision. Subsequently, the EPA and the Corp of Engineers issued the "Clean Water Rule: Definition of 'Waters of the United States.'" (2015 WOTUS Rule.) On October 9, 2015, the Sixth Circuit stayed the 2015 WOTUS rule nationwide pending further action of the court.

On July 27, 2017, the EPA and the Army issued a proposed rulemaking to repeal the 2015 WOTUS rule and reinstate the regulations in place prior to its issuance. As indicated in the proposed withdrawal, the agencies are implementing clarifying changes in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are seeking to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 WOTUS Rule. Currently, these prior regulations are being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the 2015 rule. In step 2, the agencies plan to propose a new definition that would replace the prior regulations and the approach in the 2015 Clean Water Rule. In determining the possible new approaches, EPA and the Corps of Engineers are considering a definition for "navigable water" in a manner consistent with the plurality opinion of Justice Antonin Scalia in the *Rapanos* decision as instructed by Executive Order 13778,

"Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

On November 3, 2015, under the authority of the CWA, the EPA issued a final rule amending the Effluent Limitations Guidelines (ELG) and Standards for the Steam Electric Power Generating Point Source Category (i.e., 2015 Steam Electric ELG). The amendments addressed and contained limitations and standards on various waste streams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate. EPA recently received two administrative petitions for reconsideration of the Steam Electric ELG rule, one from the Utility Water Act Group (a petitioner in the litigation) and one from the Small Business Administration Office of Advocacy. In a letter dated April 12, 2017, Administrator Pruitt informed the petitioners of his decision that it is appropriate and in the public interest to reconsider the rule. On April 25, 2017, EPA published a Federal Register notice issuing an administrative stay of the compliance dates in the rule that have not yet passed, pending judicial review, under section 705 of the Administrative Procedure Act. In addition, because Section 705 of the APA authorizes an Agency to postpone the effective date of an action pending judicial review, EPA issued a proposed rule on June 6, 2017 to postpone certain compliance dates in the rule in the event that the litigation ends, and while the Agency is undertaking reconsideration. On August 11, 2017 the Administrator announced his decision to conduct a rulemaking to potentially revise the new, more stringent BAT effluent limitations and pretreatment standards for existing sources in the 2015 rule that apply to bottom ash transport water and flue gas desulfurization (FGD) wastewater. In light of the reconsideration, EPA views that it is appropriate to postpone impending deadlines as a temporary, stopgap measure to prevent the unnecessary expenditure of resources until it completes reconsideration of the 2015 rule. Thus, the Administrator signed a final rule on September 9, 2017 postponing the earliest compliance dates for the BAT effluent limitations and PSES for bottom ash transport water and FGD wastewater in the 2015 Rule, from November 1, 2018 to November 1, 2020. This rule also withdraws EPA's notification of Postponement of Certain Compliance Dates under Section 705 of the Administrative Procedures Act that was published on April 25, 2017.

National Primary Drinking Water Regulations for Lead and Copper

The Lead and Copper Rule (LCR) reduces risks to drinking water consumers from lead and copper that can enter drinking water as a result of corrosion of plumbing materials. The LCR requires water systems to sample at taps in homes with leaded plumbing materials. Depending upon the sampling results, water systems must take actions to reduce exposure to lead and copper including corrosion control treatment, public education, and lead service line replacement. The LCR was promulgated in 1991 and, overall, has been effective in reducing the levels of lead and copper in drinking water systems across the country. However, lead crises in Washington, DC, and in Flint, Michigan, and the subsequent national attention focused on lead in drinking water in other communities have underscored significant challenges in the implementation of the current rule, including a rule structure that, for many systems, only compels protective actions after public health threats have been identified. Key challenges include the rule's complexity; the degree of flexibility and discretion it affords systems and primacy states with regard to optimization of corrosion control treatment; compliance sampling practices, which in some cases, may not adequately protect from lead exposure; and limited specific focus on key areas of concern such as schools. There is a compelling need to modernize and strengthen implementation of the rule-to strengthen its public health protections and to clarify its implementation requirements to make it more effective and more readily enforceable. EPA is evaluating the costs and benefits of the potential revisions and assessing whether the benefits justify the costs

Cleaning Up Communities and Advancing Sustainable Development

EPA's regulatory program recognizes the progress in environmental protection and incorporates new technologies and approaches that allow us to provide for an environmentally sustainable future more efficiently and effectively.

Coal Combustion Residuals (CCR) Review

On April 17, 2015, the EPA promulgated a final rule that establishes minimum national criteria under subtitle D of the Resource Conservation and Recovery Act (RCRA) for Coal Combustion Residuals (CCR) landfills and surface impoundments at active coal fired power plants. The rule regulates surface impoundments and landfills that are actively

accruing CCR, inactive surface impoundments still containing CCRs, and water both at operating power plants actively burning coal and those that burned coal in the past but have transitioned to use of an alternate fuel source. The requirements of the rule included: location restrictions (floodplains, wetlands, unstable areas, etc.); design criteria (liners, structural integrity criteria); operating criteria (e.g., run-on and runoff controls, inspections, fugitive dust controls); groundwater monitoring and corrective action; closure and post-closure care (e.g., final cover systems, 30 years of groundwater monitoring); and recordkeeping. At the time the final CCR rule was issued under subtitle D of RCRA, the EPA did not have the authority to enforce these criteria nor was the EPA authorized to approve state permit programs, as is the case for municipal solid waste landfills. Instead, the requirements of the CCR rule are directly applicable to owner/operators of facilities where disposal units are located and can be enforced via citizen suit or under the "imminent and substantial danger" authority of RCRA section 7002. Owner/operators are required under the rule to place notifications in their operating record, on their Web site, and in some instances provide notice to the directors of appropriate State agencies documenting the measures taken to comply with the rule.

The 2015 CCR Rule does not make a final Bevill regulatory determination as to whether CCRs warrant regulation as a hazardous waste under subtitle C of RCRA, but instead defers a final regulatory determination until the EPA has more information on specific matters influencing the risks posed by CCRs.

Subsequent to the promulgation of the 2015 CCR Rule, various environmental and industry groups submitted to the D.C. Circuit seven separate petitions for review, which were consolidated into a single action. On June 16, 2016, in response to the EPA's unopposed motion for voluntary remand of certain issues, the D.C. Circuit issued an order remanding with vacatur to the EPA specific provisions of the rule for further consideration, and remanding without vacatur other issues. The EPA will consider the provisions remanded by the D.C. Circuit, as well as the issues raised in the 2017 petition and other implementation issues subsequently raised by stakeholders.

Reconsideration of the Accidental Release Prevention Regulations under Clean Air Act

Both EPA and the Occupational Safety & Health Administration (OSHA) issued regulations, as required by the Clean Air Act Amendments of 1990, in response to a number of catastrophic chemical accidents occurring worldwide that had resulted in public and worker fatalities and injuries, environmental damage, and other community impacts. OSHA published the Process Safety Management (PSM) standard (29 CFR part 1910.119) in 1992. EPA modeled the Risk Management Program (RMP) regulation after OSHA's PSM standard and published the RMP rule in two stages-a list of regulated substances and threshold quantities in 1994; and the RMP final regulation, containing risk management requirements, in 1996. Both the OSHA PSM standard and the EPA RMP regulation aim to prevent, or minimize the consequences of, accidental chemical releases to workers and the community.

On January 13, 2017, the EPA amended the RMP regulations in order to (1) reduce the likelihood and severity of accidental releases, (2) improve emergency response when those releases occur, and (3) enhance State and local emergency preparedness and response in an effort to mitigate the effects of accidents.

Having considered the objections to the RMP Amendments rule raised in various petitions, the EPA subsequently delayed the effective date of the RMP Amendments rule to February 19, 2019, in order to give the EPA time to reconsider the rule. Prior to the rule becoming effective, the EPA plans to take comment on specific issues to be reconsidered and consider possible regulatory actions to revise the RMP amendments.

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues from Electric Utilities: Remand Rule

The EPA is planning to modify the final rule on the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act issued on April 17, 2015 (80 FR 21302). As a result of a settlement agreement on this final rule, the EPA is addressing specific technical issues remanded by the court. Further, the Water Infrastructure Improvements for the Nation Act of 2016 established new statutory provisions applicable to CCR units, including authorizing States to implement the CCR rule through an EPA-approved permit program and authorizing the EPA to enforce the rule. The EPA is considering amending certain performance standards in the CCR rule to offer additional flexibility to State permitting authorities with approved programs.

As a result of a consent decree, the EPA is pursuing a rulemaking for the prevention of hazardous substance discharges under the Clean Water Act (CWA). The CWA hazardous substances and their associated reportable quantities (RQs) are identified in 40 CFR parts 116 and 117, respectively. The EPA will assess the consequences of hazardous substance discharges into the Nation's waters, and evaluate the costs and benefits of potential preventive regulatory requirements for facilities handling such substances.

Ensuring the Safety of Chemicals and Preventing Pollution

EPA acts under several different statutory authorities, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Food, Drug and Cosmetic Act (FFDCA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know-Act (EPCRA), and the Pollution Prevention Act (PPA) to protect individuals, families, and the environment from potential risks of pesticides and other chemicals. Using sound science as a compass, the Agency will continue to satisfy its overall directives under these authorities and highlights the following efforts underway in FY 2018:

Frank R. Lautenberg Chemical Safety for the 21st Century Act Implementation. Enacted on June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act amended TSCA with immediate effect. The Agency is working aggressively to carry out the requirements of the new law. Among other things, EPA is now required to evaluate existing chemicals purely on the basis of the health risks they pose-including risks to vulnerable groups and to workers who may use chemicals daily as part of their jobs. If unreasonable risks are found, EPA must then take steps to eliminate these risks. In June 2017, EPA released scope documents for the initial ten chemicals for risk evaluation under the amended law. These documents identify what uses of the chemicals will be evaluated and how the risk evaluation will be conducted. In FY 2018, EPA will publish and take public comment on Problem Formulation documents which will refine the current scope of the risk evaluations prior to publication the draft risk evaluations in FY 2019.

EPA is also now required to systematically prioritize and evaluate chemicals on a specific and enforceable schedule. Within a few years, EPA's chemicals program will have to assess at least 20 chemicals at a time, beginning another chemical review as soon as one is completed. In June 2017, EPA promulgated final framework regulations addressing the procedures that EPA will employ to prioritize chemicals under TSCA for risk evaluation, as well as the procedures that EPA will follow to evaluate the risks of chemicals procedures. EPA also promulgated a final rule, per statutory requirements, to require chemical manufacturers to report on TSCA chemicals they have manufactured (including imported) within the past 10 years. Although the framework regulations did not formally establish an approach to identify how chemicals will be selected as candidates for low- or high-priority designation, EPA will initiate a stakeholder process in FY 2018 with the objective of identifying approaches for bringing TSCA chemicals into the prioritization process. EPA will subsequently determine whether to amend the procedural regulations in consideration of the information obtained during the stakeholder process.

The new law also authorizes EPA cover a portion of its annual TSCA program costs by collecting user fees from chemical manufacturers and processors when they: submit test data for EPA review, submit a premanufacture notice for a new chemical or a notice of new use, manufacture or process a chemical substance that is the subject of a risk evaluation, or request that EPA conduct a chemical risk evaluation. The proposal and finalization of a fees rule is an EPA priority in FY 2018.

Finally, the new law requires EPA to promulgate by June 22, 2018 a final rule that establishes reporting requirements to facilitate the update of the inventory of the supply, trade, and use of mercury in the United States. EPA will issue a proposed rule in early FY 2018 and promulgate the final rule on or before the statutory deadline.

Reconsideration of Pesticide Safety Requirements

In FY 2017, EPA solicited comments this spring on regulations that may be appropriate for repeal, replacement, or modification in keeping with Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda." EPA also held a public meeting of the Pesticide Program Dialogue Committee in May 2017 that included session specifically

devoted to receiving public feedback on potential pesticide regulatory reform opportunities for EPA's Regulatory Reform Task Force to consider. Although many commenters expressed their support for EPA's pesticide safety regulations, EPA also received comments that suggested specific changes to the January 4, 2017, Certification of Pesticide Applicators final rule (amending the requirements at 40 CFR 171) and to the November 2, 2015, Worker Protection Standard final rule (which amended the regulations at 40 CFR 170). EPA expects to publish separate Notices of Proposed Rulemaking in FY 2018 to solicit public input on revisions to these rules.

Annual Regulatory Costs

Section 3 of Executive Order 13771 (82 FR 9339, February 3, 2017) calls on agencies to "identify for each regulation that increases incremental cost, the offsetting regulations...and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation." Each action in EPA's fall 2017 Regulatory Plan and Semiannual Regulatory Agenda contains information about whether an action is anticipated to be "regulatory" or "deregulatory" in fulfilling this executive directive. Based on current schedules and expectations regarding whether or not regulatory actions are subject to Executive Order 12866 and hence Executive Order 13771, in fiscal year 2018, EPA is planning on finalizing over 30 deregulatory actions and fewer than 10 regulatory actions. EPA expects the combined cost savings of its planned deregulatory actions to far outweigh the costs of its planned regulatory actions.

Rules Expected to Affect Small Entities

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. Actions that may affect small entities can be tracked on EPA's Regulatory Flexibility Web site (https://www.epa.gov/reg-flex) at any time. This Plan includes the following rules that may be of particular interest to small entities:

Rulemaking Title	**Regulatory Identifier Number (RIN)**
Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry	2050-AG61
National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions	2040-AF15

View Rule

View EO 12866 Meetings | Printer-Friendly Version | Download RIN Data in XML

EPA/OAR **RIN:** 2060-AT33 **Publication ID:** Fall 2017

Title: Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards

Abstract:

As required by Clean Air Act (CAA), in this action, the Administrator will establish the air quality designations for all areas of the United States under the 2015 ozone National Ambient Air Quality Standards (NAAQS). The designations "attainment", "nonattainment", or "unclassifiable" are based upon air quality monitoring data and other relevant information pertaining to the air quality in the affected area, including whether an area contains emissions sources that contribute to a violation of the standard in a nearby area. Under the schedule prescribed in the CAA, the Administrator is required to promulgate designations for the 2015 ozone NAAQS no later than October 1, 2017, and EPA may extended for up to 1 year in the event the Administrator has insufficient information to promulgate the designations. EPA extended the deadline to October 1, 2018. If the Administrator intends to modify any of the designation recommendations previously provided by States or Tribes, he must notify those states or tribes no less than 120 days prior to promulgating final designations and provide them an opportunity to demonstrate why a proposed modification is inappropriate.

Agency: Environmental Protection Agency(EPA)
Priority: Info./Admin./Other
RIN Status: Previously published in the Unified Agenda
Agenda Stage of Rulemaking: Completed Actions
Major: No
Unfunded Mandates: No
EO 13771 Designation: Not subject to, not significant
CFR Citation: 40 CFR 81
Legal Authority: 42 U.S.C. 7401 et seq.

Legal Deadline:

Action	Source	Description	Date
Final	Statutory	Clean Air Act deadline (2 years from promulgations of new/revised NAAQS). Ozone NAAQS revised on Oct. 1, 2015.	10/01/2017

Overall Description of Deadline: Statutory

Timetable:

Action	Date	FR Cite
Notice	08/10/2017	82 FR 37318
Final Rule	11/16/2017	82 FR 54232
Final Rule Effective	01/16/2018	

Additional Information: Docket #:EPA-HQ-OAR-2017-0223, EPA-HQ-OAR-2017-0548, EPA-HQ-OAR-2017-0549
Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Small Entities Affected: No
Federalism: No
Included in the Regulatory Plan: No
RIN Data Printed in the FR: No

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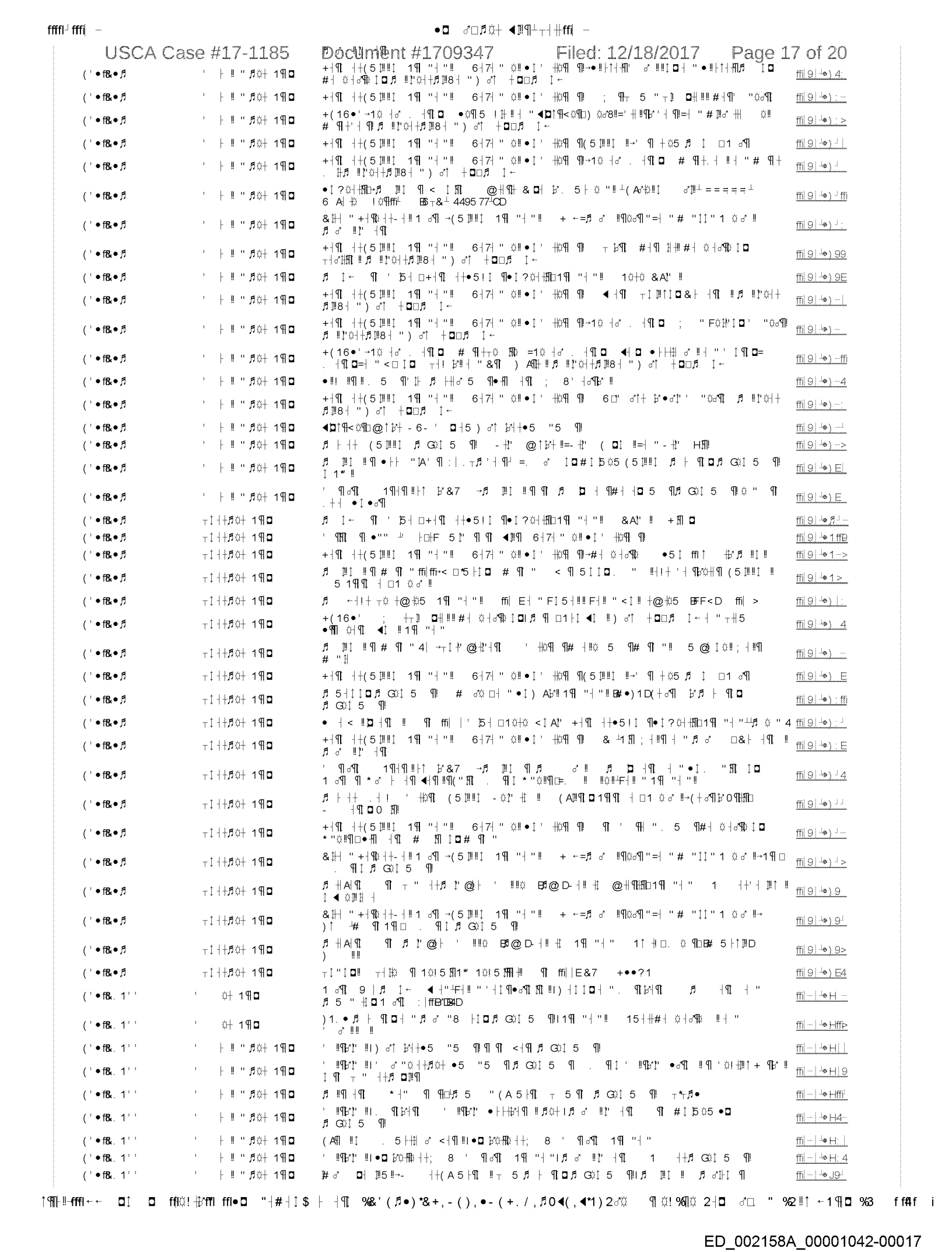

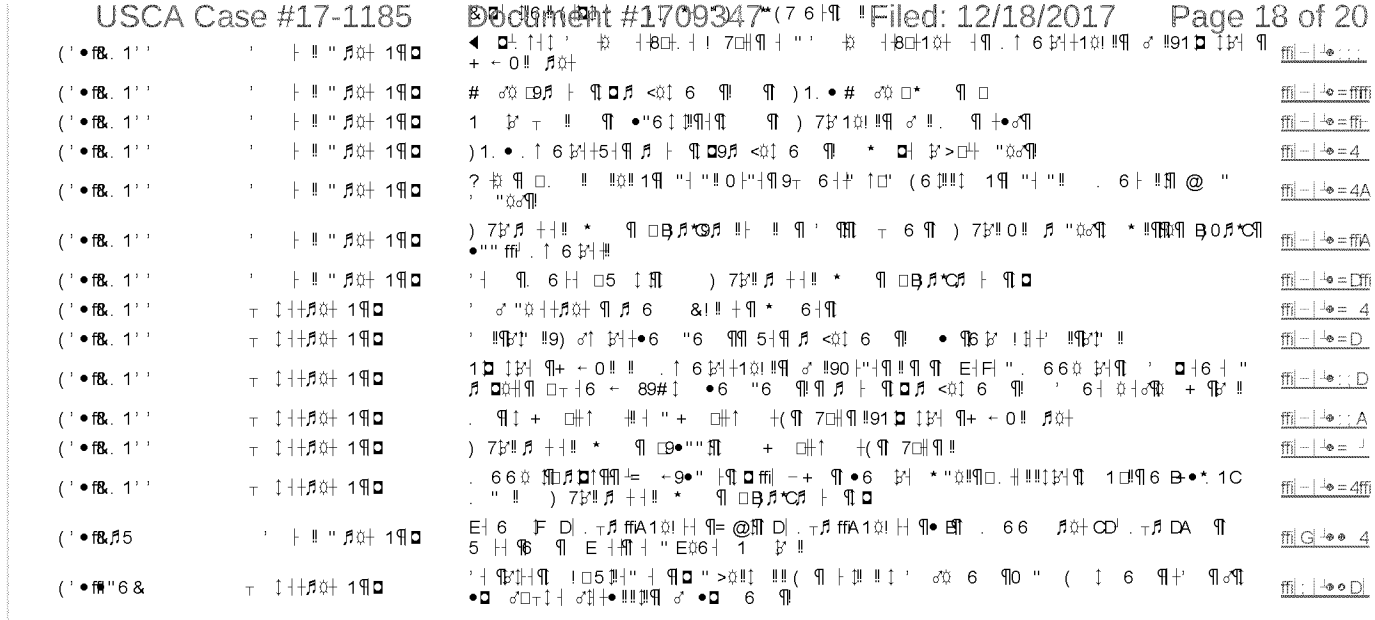

Agency Rule List - Fall 2017

Environmental Protection Agency

Agency	Agenda Stage of Rulemaking	Title	RIN
EPA/ROSEATTLE	Long-Term Actions	Revisions to Federal Implementation Plans Under the Clean Air Act for Indian Country in Idaho, Oregon, and Washington	2012-AA02
EPA/OW	Long-Term Actions	Development of Best Management Practices for Recreational Boats Under Section 312(o) of the Clean Water Act	2040-AF03
EPA/OW	Long-Term Actions	National Pollutant Discharge Elimination System (NPDES) Application and Program Updates Rule	2040-AF25
EPA/OW	Long-Term Actions	Water Quality Standards for Selenium in the San Francisco Bay and Delta	2040-AF61
EPA/OW	Long-Term Actions	Federal Baseline Water Quality Standards for Indian Reservations	2040-AF62
EPA/OW	Long-Term Actions	Federal Human Health Criteria Applicable to Idaho	2040-AF66
EPA/OW	Long-Term Actions	Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	2040-AF77
EPA/OW	Long-Term Actions	Federal Selenium Criteria for Aquatic Life and Aquatic-Dependent Wildlife Applicable to California	2040-AF79
EPA/OW	Long-Term Actions	National Primary Drinking Water Regulations: Radon	2040-AA94
EPA/OW	Long-Term Actions	National Primary Drinking Water Regulations: Aldicarb	2040-AC13
EPA/OW	Long-Term Actions	Underground Injection Control: Update of State Programs	2040-AD40
EPA/OW	Long-Term Actions	National Primary Drinking Water Regulations: Regulation of Perchlorate	2040-AF28
EPA/OW	Long-Term Actions	National Primary Drinking Water Regulations: Group Regulation of Carcinogenic Volatile Organic Compound (VOCs)	2040-AF29
EPA/OW	Long-Term Actions	National Primary Drinking Water Regulations: Finished Water Storage Facility Inspection Requirements Addendum to the Revised Total Coliform Rule	2040-AF37
EPA/OW	Long-Term Actions	Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water	2040-AF55
EPA/OW	Long-Term Actions	Shore Protection Act, Section 4103(b) Regulations	2040-AB85
EPA/OLEM	Long-Term Actions	RCRA Smarter Waste Reporting	2050-AF01
EPA/OLEM	Long-Term Actions	Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule	2050-AG84
EPA/OAR	Long-Term Actions	Protection of Stratospheric Ozone: Process for Exempting Emergency Uses of Methyl Bromide	2060-AL94
EPA/OAR	Long-Term Actions	Plywood and Composite Wood Products (PCWP) Residual Risk and Technology Review and Amendments	2060-AQ66
EPA/OAR	Long-Term Actions	Reconsideration of the Polyvinyl Chloride and Copolymers National Emission Standards for Hazardous Air Pollutants	2060-AR73
EPA/OAR	Long-Term Actions	Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter.	2060-AS35
EPA/OAR	Long-Term Actions	Review of the National Ambient Air Quality Standards for Particulate Matter	2060-AS50
EPA/OAR	Long-Term Actions	Renewables Enhancement and Growth Support Rule	2060-AS66
EPA/OAR	Long-Term Actions	Implementation of the 2015 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements	2060-AS82
EPA/OAR	Long-Term Actions	Air Quality: Revision to Definition of Volatile Organic Compounds - Exclusion of Dimethyl Succinate (DMS)	2060-AS87
EPA/OAR	Long-Term Actions	Stationary Combustion Turbine RTR	2060-AT00
EPA/OAR	Long-Term Actions	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands Residual Risk and Technology Review	2060-AT01
EPA/OAR	Long-Term Actions	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities	2060-AT03
EPA/OAR	Long-Term Actions	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Risk and Technology Review	2060-AT05
EPA/OAR	Long-Term Actions	National Emission Standards for Hazardous Air Pollutants for Rubber Tire Manufacturing Risk and Technology Review	2060-AT07
EPA/OAR	Long-Term Actions	Lime Manufacturing Risk and Technology Review	2060-AT08

EPA/OAR	Long-Term Actions	Endangerment Finding for Lead Emissions From Piston-Engine Aircraft Using Leaded Aviation Gasoline	2060-AT10
EPA/OAR	Long-Term Actions	Control of Air Pollution From Aircraft and Aircraft Engines: Proposed GHG Emissions Standards and Test Procedures	2060-AT26
EPA/OAR	Long-Term Actions	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries	2060-AT30
EPA/OAR	Long-Term Actions	Fuels Regulation Modernization - Phase 1	2060-AT31
EPA/OAR	Long-Term Actions	Response to the June 2016 Section 126 Petition From Connecticut	2060-AT35
EPA/OAR	Long-Term Actions	Response to the July 2016 Section 126 Petition From Delaware	2060-AT36
EPA/OAR	Long-Term Actions	Response to the August 2016 Section 126 Petition From Delaware	2060-AT37
EPA/OAR	Long-Term Actions	Response to the November 2016 Section 126 Petition From Delaware	2060-AT38
EPA/OAR	Long-Term Actions	Response to the August 2016 Section 126 Petition From Maryland	2060-AT39
EPA/OAR	Long-Term Actions	Response to the November 28, 2016 Section 126 Petition From Delaware	2060-AT40
EPA/OAR	Long-Term Actions	Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach	2060-AT41
EPA/OAR	Long-Term Actions	Stay of Standards of Performance for Municipal Solid Waste Landfills	2060-AT60
EPA/OAR	Long-Term Actions	Extension of Deadline for Submission of State Plans to Meet Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills	2060-AT64
EPA/OAR	Long-Term Actions	Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program	2060-AT78
EPA/OAR	Long-Term Actions	Revision of 40 CFR Part 192--Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings and Uranium In Situ Leaching Processing Facilities	2060-AP43
EPA/OAR	Long-Term Actions	Renewable Fuel Standard Program; Grain Sorghum Oil Pathway	2060-AT82
EPA/OCSPP	Long-Term Actions	Pesticides; Expansion of Crop Grouping Program	2070-AJ28
EPA/OCSPP	Long-Term Actions	Pesticide Product Performance Data Requirements for Products Claiming Efficacy Against Invertebrate Pests	2070-AJ49
EPA/OCSPP	Long-Term Actions	Pesticide Data Requirements for Nontarget Insect Pollinators	2070-AK10
EPA/OCSPP	Long-Term Actions	Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings	2070-AJ56
EPA/OCSPP	Long-Term Actions	Trichloroethylene (TCE); Regulation of Certain Uses Under TSCA Section6(a)	2070-AK03
EPA/OCSPP	Long-Term Actions	N-Methylpyrrolidone (NMP) and Methylene Chloride; Rulemaking Under TSCA Section 6(a)	2070-AK07
EPA/OCSPP	Long-Term Actions	Significant New Use Rule; Alkylpyrrolidone Products	2070-AK09
EPA/OCSPP	Long-Term Actions	Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a); Vapor Degreasing	2070-AK11
EPA/OCSPP	Long-Term Actions	Trichloroethylene (TCE); SNUR for Non-Aerosol Spray Degreasers	2070-AK18
EPA/OCSPP	Long-Term Actions	Procedural Rule: Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory--Amended TSCA Section 8(b)(4)(C)	2070-AK21
EPA/OCSPP	Long-Term Actions	TSCA Chemical Data Reporting Revisions	2070-AK33
EPA/OCSPP	Long-Term Actions	Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)	2070-AK34

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Subject: Dudley-Peacock paper attached
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THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

Working Paper[1]

June 30, 2017

Improving Regulatory Science

A Case Study of the National Ambient Air Quality Standards

Susan E. Dudley, Director, & Marcus Peacock[2]

The George Washington University Regulatory Studies Center

Abstract

This paper explores the motivations and institutional incentives of participants involved in the development of regulation aimed at reducing health risks, with a goal of understanding and identifying solutions to what the Bipartisan Policy Center has characterized as "a tendency to frame regulatory issues as debates solely about science, regardless of the actual subject in dispute, [that] is at the root of the stalemate and acrimony all too present in the regulatory system today." We focus our analysis with a case study of the procedures for developing National Ambient Air Quality Standards under the Clean Air Act, and attempt to identify procedural approaches that bring greater diversity (in data, expertise, experience, and accountability) into the decision process.

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[1] This working paper, which has been submitted to the *Supreme Court Economic Review*, reflects the views of the authors and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center's policy on research integrity is available at http://regulatorystudies.columbian.gwu.edu/policy-research-integrity.

[2] Susan E. Dudley is Director of the GW Regulatory Studies Center and Distinguished Professor of Practice in the Trachtenberg School of Public Policy and Public Administration. Marcus Peacock is Executive Vice President at Business Roundtable. The authors are grateful for constructive comments from Sydney Allen, Art Fraas, George Gray, Brian Mannix, John McGinnis, and Sofie Miller, as well as feedback from participants at conferences of the Society for Benefit Cost Analysis, the Society for Risk Analysis, and the George Mason Law & Economics Center.

Regulatory Science and Policy

Regulations intended to address public health and environmental risks depend heavily on scientific information. These regulations are often the subject of heated debate, involving accusations of "politicized science," "advocacy science," and "junk science."[3] While it is legitimate to want to protect the integrity of scientific findings, more often than not, these policy debates center on issues that science must inform, but cannot decide.

No one is immune to the temptation to spin science to advance a pre-determined policy goal. However, masquerading policy preferences as "science" can be extremely harmful. At its worst, scientists and policymakers work, wittingly or unwittingly, in an unholy alliance to support harmful political preferences in the name of "science." Perhaps the most notorious example in the United States is the extent to which some scientists in the 19th century declared certain human races inherently "inferior." This "evidence" was, in turn, used by politicians to justify, and defend, race-based slavery.[4] Fortunately, the costs of "politicized science" in the United States today are less severe than mass human enslavement, but they can still have significant adverse effects on public policies as well as diminish the integrity of scientific advice.

While there is extensive media coverage of "politicized science" related to public disagreements regarding regulatory issues that have a strong scientific component, such as genetically-modified organisms or climate change, the examination of how science may be politicized inside federal regulatory decision-making processes has been largely limited to academia and the scientific community.[5] In particular, while attempts by advocates of policies to improperly shape science have been widely presented in the media, in everything from main stream news reports[6] to the HBO series *Mad Men,*[7] there has been much less examination of the role of scientists improperly attempting to shape policy decisions. Yet the latter problem can be just as serious. As former Assistant Administrator of the US Environmental Protection Agency, Milton Russell, has noted, while government scientists need to be protected from "influence over what they *find and report,*" "policy-makers must be protected from policy analysts or scientists telling them what

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3 See, for example, Jason Scott Johnston, ed. *Institutions and Incentives in Regulatory Science*. Lexington Books (2012)

4 See, for instance, the work of anthropologist Henry Hotze on behalf of the Confederate States of America in Lonnie A. Burnett, *Henry Hotze: Confederate Propagandist*, University of Alabama Press: Tuscaloosa, AL (2008).

5 See, for instance, Jake C. Rice, "Food for Thought: Advocacy science and fisheries decision-making," *ICES Journal of Marine Science*, 68(10) (2011), pp. 2007-2012.

6 See, for instance, a discussion of how politicians from both major parties attempt to spin science in Sheryl Gay Stolberg, "Obama Puts His Own Spin on Mix of Science with Politics," *The New York Times*, March 9, 2009.

7 See, for instance, the discussion of the manipulation of the public regarding the health effects of tobacco on behalf of tobacco companies in "Smoke Gets in Your Eyes." *Mad Men: Season One*. Writ. Matthew Weiner. Dir. Alan Taylor. AMC, 2007.

they should *decide*, but open to information about what the consequences of alternative decisions are likely to be."[8]

This paper examines two types of politicized science that can infect policymaking inside regulatory agencies. The first is when scientists, intentionally or unintentionally, insert, but do not disclose, their own policy preferences in the scientific advice they provide government decision-makers. Such "hidden policy judgments" are a form of "advocacy science."[9] The second is when scientists and/or policymakers conflate scientific information and nonscientific judgments to make a policy choice, but then present that decision as being solely based on science. It is this tendency to "camouflag[e] controversial policy decisions as science" that Wagner called a "science charade"[10] and it can be particularly pernicious. For instance, a 2009 Bipartisan Policy Center (BPC) 2009 report, *Improving the Use of Science in Regulatory Policy*, concluded that "a tendency to frame regulatory issues as debates solely about science, regardless of the actual subject in dispute, is at the root of the stalemate and acrimony all too present in the regulatory system today."[11] Both of these problems, hidden policy judgments and the science charade, can be the result of officials falling prey to the "is-ought fallacy": incorrectly mixing up positive information about what "is" with normative advice about what "ought to be."

This paper focuses on the problems of hidden policy judgments and the science charade inside federal regulatory agencies. It examines why these are problems, the institutional incentives that contribute to them, and possible remedies. After describing what we mean by hidden policy judgments and the science charade, and describing the "is-ought fallacy," we illustrate these problems by examining the incentives and behavior of participants in the development of national ambient air quality standards (NAAQS) under the Clean Air Act.[12] The paper concludes with ten recommendations for changing those incentives.

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8 Milton Russell, "Lessons from NAPAP," *Ecological Applications*, 2(2), 1992, p. 108.

9 "Advocacy science" is an elusive term and can, for instance, include the activity of scientists seeking more federal funding for research. For the purposes of this paper the term is defined as when a policy preference is presented in the form of scientific advice. For a discussion of advocacy science see Deborah Runkle, Mark S. Frankel ed., "Advocacy in Science: Summary of a Workshop convened by the American Association for the Advancement of Science," 1 May 2012, pp. 2-3.

10 Wagner, W.E. The Science Charade in Toxic Risk Regulation. Columbia Law Review. 1995 Nov;95(7): 1614; 29.

11 Bipartisan Policy Center. Improving the Use of Science in Regulatory Policy. Washington (DC): Bipartisan Policy Center; 2009;10. Available at: http://www.bipartisanpolicy.org/sites/default/files/BPC%20Science%20Report%20fnl.pdf "BPC"

12 The Clean Air Act, 42 U.S.C. § 7408 Available at: http://www.gpo.gov/fdsys/pkg/USCODE2008-title42/pdf/USCODE-2008-title42-chap85.pdf

The Politicization of Science

Science is rarely sufficient for making policy decisions for two reasons. First, while science is essential for understanding the positive question of *what is*, or predicting what outcomes might obtain under different scenarios, it is not determinative for the normative decisions regarding what *ought to be*.[13] Along these lines, in 1983 the National Research Council (NRC) of the National Academy of Sciences described the following conceptual framework for making regulatory decisions regarding health, safety and environmental risks:

> Regulatory actions are based on two distinct elements, risk assessment… and risk management. Risk assessment is the use of the factual base to define the health effects of exposure of individuals or populations to hazardous materials and situations. Risk management is the process of weighing policy alternatives and selecting the most appropriate regulatory action, integrating the results of risk assessment with engineering data and with social, economic, and political concerns to reach a decision.[14]

In other words, regulatory decisions can be split conceptually into two phases. The risk assessment phase provides science-based information regarding what we know about a risk (positive information regarding *what is*). However, risk assessment is a necessary, but rarely sufficient, input for deciding how the government should regulate a risk. That requires a second phase, risk management, to determine what *ought to be*. Sound policy decisions regarding risk management typically need to consider a host of non-scientific factors such as economic feasibility, legal constraints, ethical considerations, and the existence of other public policies that may address, or exacerbate, the risk, to name just a few.

Hidden policy judgments in risk assessments

Unfortunately, in practice there is not a clear distinction between scientific and policy decisions in the regulatory process. First, when it comes to risk assessment, scientists will never have complete information to predict outcomes with certainty, so analysts rely on what the NRC calls "risk assessment policy"—assumptions, judgments, and rules of thumb—to guide the use of scientific information in analyses that inform policy in the face of uncertainty. The NRC puts it this way:

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[13] See John Neville Keynes, *The Scope and Method of Political Economy*, Fourth Edition., Batoche Books: Kitchener, Ontario (1999), p. 22.

[14] National Research Council and the Committee on the Institutional Means for Assessment of Risks to Public Health. *Risk Assessment in the Federal Government: Managing the Process.* 1983. Washington D.C.: National Academies Press, p. 3. This document is also commonly known as the "Red Book."

> In each step [of the risk assessment process], a number of decision points (components) occur where risk to human health can only be inferred from the available evidence. Both scientific judgments and policy choices may be involved in selecting from among possible inferential bridges, and we have used the term risk assessment policy to differentiate those judgments and choices from the broader social and economic policy issues that are inherent in risk management decisions.[15]

Thus, the risk assessment phase itself embeds judgments that need to be made to produce a result that scientists can give to policymakers; and these judgments, intentionally or not, can bias the ultimate advice provided to decision-makers and the public.

This fuzziness between science and policy choices is not unique to health and safety regulations. In 1972 Alvin Weinberg pointed out, "Many of the issues which arise in the course of the interaction between science or technology and society—e.g., the deleterious side effects of technology, or the attempts to deal with social problems through the procedures of science—hang on the answers to questions which can be asked of science and yet which cannot be answered by science."[16] To describe such questions, Weinberg coined the term "trans-science." Figure 1 below illustrates the relationship between pure scientific inputs and policy decisions, and the role of "trans-science" and judgment in interpreting and presenting evidence relevant to policy. "Risk assessment policy" includes various judgments, including: which science is considered; how individual studies are weighed and combined; when competing theories are considered appropriately supported for inclusion; which models to use; and in general, what to do in the face of scientific uncertainty. It also guides the way in which risks are characterized and communicated.[17]

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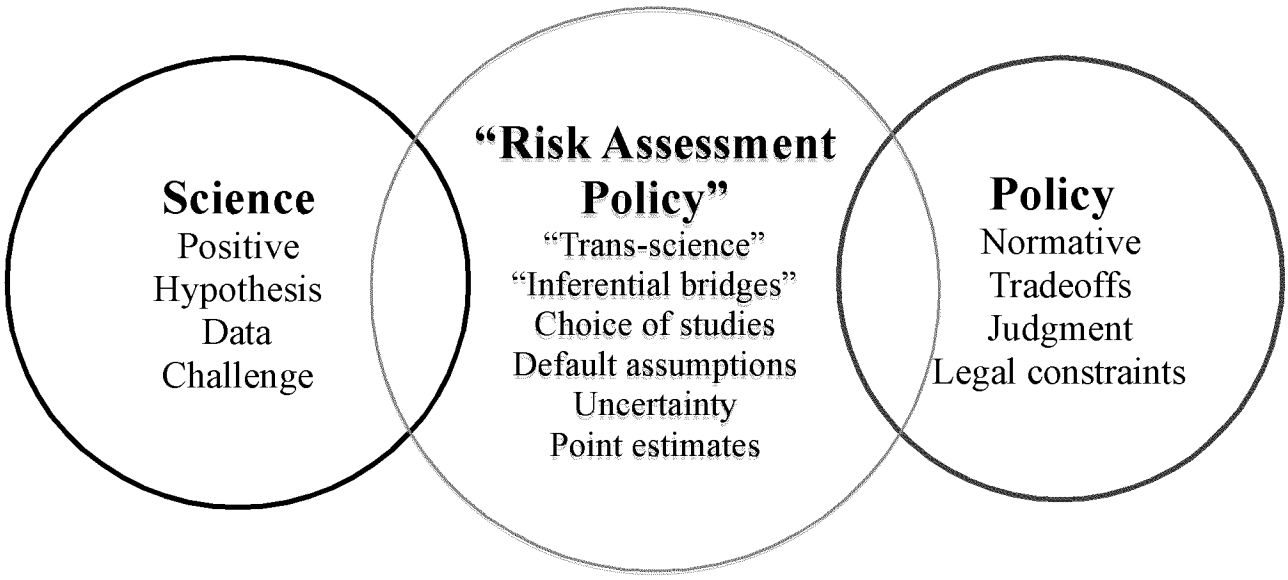
[15] National Research Council and the Committee on the Institutional Means for Assessment of Risks to Public Health. *Risk Assessment in the Federal Government: Managing the Process.* 1983. Washington D.C.: National Academies Press, p. 3.

[16] Alvin M. Weinberg. "Science and Trans-Science." *Science* 177.4045 (1972): 211. Print. "I propose the term trans-scientific for these questions since, though they are, epistemologically speaking, questions of fact and can be stated in the language of science, they are unanswerable by science; they transcend science... Scientists have no monopoly on wisdom where this kind of trans-science is involved...."

[17] Dudley, SE & Gray, GM. "Improving the Use of Science to Inform Environmental Regulation," in *Institutions and Incentives in Regulatory Science,* Lexington Books, Jason Johnston ed. (2012)

Figure 1. Science, Policy, and "Risk Assessment Policy"



Based on Dudley and Gray, "Improving the Use of Science to Inform Environmental Regulation," in *Institutions and Incentives in Regulatory Science,* Lexington Books, Jason Johnston ed. (2012)

Policymakers and the public are often unaware of the influence of these risk assessment policy choices or the existence of alternative choices that are equally plausible. Instead, assessments often generate precise-sounding predictions that hide not only considerable uncertainty about the actual risk, but the reliance on biased inferences and assumptions for handling that uncertainty.[18] As noted above, this is a problem of hidden policy judgments. While some judgment is necessary to translate scientific evidence into risk assessment, current risk assessment policies are not transparent, and lead to distortions in risk estimates and false precision in the presentation of scientific information.[19] These practices obscure the boundary between science and policy, and contribute to the politicization of science through biased science advice.

Former EPA scientist Robert T. Lackey cautions against this problem, which he calls "normative science":

[18] For example, EPA's "Risk Assessment Principles and Practices" document states: "[s]ince EPA is a health and environmental protective agency, EPA's policy is that risk assessments should not knowingly underestimate or grossly overestimate risks. This policy position prompts risk assessments to take a more 'protective' stance given the underlying uncertainty with the risk estimates generated." (USEPA 2004, 13-14)

[19] Gray, G. & Cohen, J. "Rethink Chemical Risk Assessment." *Nature*. 2012 Sep; 489. P. 27.:"the problem is the EPA's use of assumptions that it claims are 'public health protective,' which err on the side of overstating risk when data are lacking…. Such inflated risk estimates can lead to overly stringent regulations and can scramble agency priorities because the degree of precaution differs across chemicals."

> Science should be objective and based on the best information available. Too often, however, scientific information presented to the public and decision-makers is infused with hidden policy preferences. Such science is termed normative, and it is a corruption of the practice of good science. Normative science is defined as "information that is developed, presented or interpreted based on an assumed, usually unstated, preference for a particular policy choice."[20]

Normative science can be masked by presentations that are not transparent. For example, in its 2011 evaluation of EPA's Integrated Risk Information System (IRIS) assessment for formaldehyde, the National Academy of Sciences raised concerns about recurring "problems with clarity and transparency of the methods":

> In general, the committee found that the draft was not prepared in a consistent fashion; it lacks clear links to an underlying conceptual framework; and it does not contain sufficient documentation on methods and criteria for identifying evidence from epidemiologic and experimental studies, for critically evaluating individual studies, for assessing the weight of evidence, and for selecting studies for derivation of the [reference dose] RfCs and unit risk estimates.[21]

When risk management becomes a science charade

While embedded policy judgments raise concerns of hidden bias in the *risk assessment* phase of a rulemaking, policy judgments couched as "science" can raise similar problems in the *risk management* phase.

While there should be a clear distinction in the minds of scientists and policymakers between describing what "is" and deciding what "ought to be," the two are sometimes unintentionally, or intentionally, conflated when the ultimate policy decision is presented as dictated solely by "the science." We adopt the phrase "science charade"[22] to describe the camouflaging of controversial policy decisions as science.

Scientists and/or policymakers create a science charade by describing a policy decision in purely scientific (or scientific sounding) terms without revealing the trans-science and policy factors that played a role in the decision. For instance, in 1982, EPA faced a decision whether to regulate formaldehyde under the Toxic Substances Control Act. In order to regulate, the Administrator

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[20] Lackey, Robert T. "Normative Science." *Terra Magazine.* Oregon State University. 2013;8(2).

[21] Committee to Review EPA's Draft IRIS Assessment of Formaldehyde; National Research Council. *Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde.* Washington (DC): National Academy of Sciences; 2011: 4. Available at: http://www.nap.edu/catalog.php?record_id=13142

[22] See Wendy E. Wagner, "The Science Charade in Toxic Risk Regulations," *Columbia Law Review*, 95:7 (November 1995), pp. 1613-1723.

had to find "a reasonable basis to conclude that a chemical substance or mixture presents or will present a significant risk of serious or widespread harm to human beings."[23] Such a decision inherently involves policy judgments regarding the interpretation of the terms "reasonable" basis, "significant" risk and "serious or widespread harm." Yet, in presenting the issue to the Administrator of EPA, the Assistant Administrator for Pesticides and Toxic Substances couched the decision as a purely scientific judgment:

> (a) formaldehyde is a carcinogen in the rat by the inhalation route; (b) its carcinogenic potential appears to vary significantly with species and route; (c) under certain exposure conditions it could present some carcinogenic risk to humans; and (d) given available data the risk estimates suggest that certain populations may experience a carcinogenic risk - albeit low - due to formaldehyde exposure. However, because of the nature of the toxicology data and the unreliability in the exposure data one cannot reasonably conclude, at this time, that formaldehyde poses a significant risk among the U.S. population.[24]

Scientists can unwittingly impose, or intentionally foist, science charades on decisionmakers by hijacking risk management decisions. Policymakers can create science charades on their own (as in the example above), or scientists and policymakers may cooperate in disguising value-laden decisions as the necessary result of "the best science." Regardless, the science charade results in similar harms as hidden policy judgments in risk assessments: the public is cheated of sound and open policy making and the integrity of science advice is weakened.

Falling prey to the "is-ought" fallacy

As noted above, science describes what "is" but it cannot solely determine what "ought to be." Both hidden policy judgments in risk assessments and science charades result from incorrectly mixing up positive information about what "is" with normative advice about what "ought to be." These errors are examples of the "is-ought fallacy."[25] This fallacy, first identified by philosophers David Hume and G.E. Moore in the 18th century, happens when a prescription is erroneously embedded in, or directly follows, a description, as if one automatically follows from the other. For instance, the statement "ambient carbon dioxide concentrations are increasing, therefore we must stop burning fossil fuels" may or may not be good public policy but the latter policy decision does not necessarily follow from the former scientific fact. As some scientists

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[23] 15 USC §2603(f)

[24] Nicholas A. Ashford, C. William Ryan, Charles C. Caldart, A Hard Look at Federal Regulation of Formaldehyde: A Departure from Reasoned Decisionmaking, 7 Harv. Envtl. L. Rev. (1983), pp. 327-328 excerpting Memorandum from John Todhunter to Anne Gorsuch dated 10 February 1982.

[25] Also called the "naturalistic fallacy," the "positive-normative fallacy," Hume's Law, and Hume's Guillotine.

have noted, only "in the most trivial of decision contexts, where there is no immediate disagreement about relevant facts, values or decision options, can a fact dictate an action."[26]

This fallacy is not unique to science. It "is common and has been the source of many mischievous errors"[27] confounding diverse areas of study and decision making.[28] However, it can be particularly pernicious when it influences government regulations that affect the lives of millions of people and the allocation of significant resources. Both scientists and policymakers may fall prey, willfully or not, to the is-ought fallacy.

Scientists and policymakers may intentionally invoke the is-ought fallacy, although for different reasons. Scientists may wish to influence policymakers by subtly absorbing nonscientific assumptions in their risk assessments or in descriptions of what "is" so that it appears there is no better risk management alternative than the one they prefer. Likewise, decisionmakers, such as political appointees, who may fear criticism of a particular decision can muddle descriptions of "is" with assumptions regarding what "ought to be" in the risk management phase of rulemaking and claim that "science" dictated the outcome. In both cases, the fallacy allows scientists and/or policymakers to create a science charade by dressing up a policy decision and disguising it in a lab coat.

The harms of politicized science and the example of NAAQS

The process by which EPA sets National Ambient Air Quality Standards (NAAQS) for "criteria pollutants"[29] under the Clean Air Act illustrates some of the perverse incentives involved in developing regulations, which can encourage biased science advice and a science charade. The NAAQS process is particularly worth examining, because on the one hand it is held up by some as an ideal by which all science-based rulemaking should be developed,[30] but on the other, NAAQS decisions are among the most controversial of EPA policies. Each of the last three

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[26] Daniel Sarewitz, "Science Advocacy is an Institutional Issue, Not an Individual One," Background Paper for the AAAS Consortium for Science, Policy and Outcomes, Workshop on Advocacy in Science, January 2012, p. 4.

[27] See John Neville Keynes, *The Scope and Method of Political Economy*, Fourth Edition., Batoche Books: Kitchener, Ontario (1999), p. 22.

[28] See, for instance, James A. Davis, "The 'Is-Ought' Fallacy and Musicology: The Assumptions of Pedagogy," *Philosophy of Music Education Review*, Vol. 5, No. 1 (Spring, 1997), pp. 25-32

[29] The Clean Air Act, 42 U.S.C. § 7408 (a)(1) identifies six "criteria pollutants": particulate matter, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead. Available at: http://www.gpo.gov/fdsys/pkg/USCODE2008-title42/pdf/USCODE-2008-title42-chap85.pdf

[30] Wagner, W. "Science in Regulation: A Study of Agency Decision making Approaches" (referring to the NAAQS development process as "the equivalent of a five-star process for incorporating science into regulatory policy.") 2013: 29. Available at: http://acus.gov/report/science-regulation-final-report

presidents has taken the highly unusual step of publicly and personally intervening in EPA's regulatory decisions.[31]

Biasing science advice or framing issues as resolvable solely by science threatens the credibility of the scientific process and damages resulting regulatory policy. Many of those involved in regulatory decisions have incentives to hide rather than reveal the uncertainty in assessments of risk[32] and to dismiss and denigrate dissenting views.[33] Key policy choices, disguised as science, rest with technical staff; meanwhile, political appointees charged with making hard policy decisions are able to avoid responsibility by claiming that their hands were tied by the science.

When questions involving policy judgment and values are falsely characterized as scientific, a small number of people have disproportionate influence on the information that is used and how it is characterized, leading to decisions that are not as accountable or as transparent as they should be.[34] This is exacerbated by the adversarial nature of rulemaking, by the reluctance of courts to review scientific findings, and by group dynamics that discourage differences of opinion, mask uncertainty, and give short shrift to alternative perspectives.

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[31] EPA's 1997 standards for ozone and fine particles were debated extensively at the cabinet level and, on issuance of the final regulations, President Clinton took the unprecedented step of writing a public memorandum to the EPA Administrator on "Implementation of Revised Air Quality Standards for Ozone and Particulate Matter," to "ensure that the new standards are implemented in a common sense, cost-effective manner." Available at: http://www.gpo.gov/fdsys/pkg/WCPD-1997-07-21/pdf/WCPD-1997-07-21-Pg1080.pdf) (See Fraas 2011 at 81-85 for an insider's account of the 1997 deliberations.) In 2008, EPA again faced objections from other agencies, as well as from state and local governments, when it proposed to revise the ozone standard. President George W. Bush was called in to settle the dispute, following the rarely used section 7 of E.O. 12866 regarding the resolution of conflicts. He decided the dispute over the appropriate form of the welfare standard by directing EPA Administrator Stephen Johnson to set it at a level identical to the primary standard. Available at: http://www.reginfo.gov/public/postreview/Steve_Johnson_Letter_on_NAAQs_final_3-13-08_2.pdf In 2011, the President intervened again. EPA was poised to revise the ozone standard amid strong objections from other parts of the government and the regulated community, when President Obama took the unusual step of "request[ing] that Administrator Lisa Jackson withdraw the draft ozone NAAQS" from interagency review. Available at: http://www.whitehouse.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards. This is the only time during President Obama's administration that the White House has returned a regulation to an agency.

[32] According to Wagner, "It would seem that such science-based mandates not only invite, but actually compel the science charade due to the threat of reversal if an agency frankly acknowledges the inherent scientific uncertainties and its requisite retreat to economic, technological, and other policy considerations in reaching a final, quantitative standard." Wagner 1995 at 1668.

[33] For example, see posts by the Center for Progressive Reform (http://www.progressivereform.org/13RulesOzone.cfm) and the Center for Regulatory Solutions (http://centerforregulatorysolutions.org/will-epas-ozone-ambitions-reveal-more-collaboration-with-green-groups/)

[34] Eisenhower warned in his farewell address, "Yet, in holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientific-technological elite."

Using the NAAQS as a case study, the next section explores the procedures for developing regulations and the institutional incentives that may encourage the is-ought fallacy and contribute to politicized science through hidden policy judgments and the science charade.

Participants in the Rulemaking Process, their Motives & Behavior

The development of regulation in the United States involves several steps and numerous parties. First, Congress must pass and the President must sign legislation authorizing regulation. Legislation addressing health and environmental risks generally expresses broad goals and objectives, but leaves fact-finding and the details of implementation to executive branch agencies, such as EPA.[35] Regulatory agencies then develop draft proposed regulations consistent with the language in the enabling legislation and according to procedures mandated by both Congress and the President.[36] In particular, the Administrative Procedure Act requires regulatory agencies to notify the public and seek comment on proposed regulations, and to base final regulations on information in the rulemaking record.[37] This notice-and-comment process guarantees interested parties (those affected by potential regulation, non-governmental organizations, and others) an opportunity to present views and information on proposed regulations.[38] Additionally, since 1981, presidents have required agencies to conduct regulatory impact analyses (RIAs) of economically significant regulations, and to subject them to interagency review through the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.[39] Congress has an opportunity to fast-track a joint resolution to disapprove a final regulation after it is published,[40] and regulations are also subject to judicial review (allowing affected parties to sue to have regulations overturned by the courts).[41] Throughout the rule development process and beyond, media will also track and report on regulations and any controversies that may arise.

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[35] Schoenbrod, David. *Power without Responsibility: How Congress Abuses the People through Delegation*. Yale University Press. 1995.

[36] Dudley, S.E. & Brito, J. *Regulation: A Primer*. Washington, DC: The George Washington University Regulatory Studies Center and Mercatus Center, George Mason University; 2012.

[37] Administrative Procedure Act (5 U.S.C. Subchapter II) Available at: http://www.archives.gov/federal-register/laws/administrative-procedure/

[38] Balla, S.J. "Public Commenting on Federal Agency Regulations: Research on Current Practices and Recommendations to the Administrative Conference of the United States." Washington (DC) 2011. Available at: http://www.acus.gov/sites/default/files/documents/Consolidated-Reports-%2B-Memoranda.pdf

[39] See Executive Orders 13563 and 12866 governing regulatory analysis and oversight. Available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf

[40] The Congressional Review Act of 1996 (5 U.S.C. § 801-808) Available at: http://www.archives.gov/federal-register/laws/congressional-review/.

[41] Dudley, S.E. & Brito, J. 2012.

The behavior of each party in the regulatory development process is influenced by these institutional structures and constraints, and the incentives they provide, as a case study of the NAAQS development process illustrates.

Authorizing Legislation

The Clean Air Act of 1970 (P.L. 91-604) directed the newly created Environmental Protection Agency to issue NAAQS for each pollutant for which the Department of Health, Education, and Welfare had already issued air quality criteria, and for widespread air pollutants identified in the future that reasonably may be expected to endanger public health or welfare.[42]

The Act directed the EPA Administrator to set "primary," or health-based, NAAQS at levels that are "requisite to protect the public health … allowing an adequate margin of safety,"[43] based on "air quality criteria [that] shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities."[44] It further required the Administrator to set "secondary" (welfare-based) standards based on these criteria at a level "requisite to protect the public welfare from any known or anticipated adverse effects."[45]

Amendments to the Clean Air Act in 1977 (P.L. 95-95) required the Administrator to conduct a "thorough review of the criteria…and promulgate such new standards as may be appropriate," at least every five years.

In 2001 the Supreme Court confirmed EPA's interpretation that, when it sets primary standards, the statutory language precludes consideration of the costs of achieving the standard.[46] Thus the Clean Air Act itself, at least in this reading, encourages the is-ought fallacy by implying that scientific evidence is sufficient to resolve such normative questions as what is "requisite to protect public health," or an "adequate margin of safety."[47]

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[42] For a thorough review of the history of NAAQS, see Bachmann, John. "Will the Circle Be Unbroken: A History of the U.S. National Ambient Air Quality Standards." Journal of the Air & Waste Management Association. Volume 57, Issue 6, 2007. He finds, "Even a cursory look at the history of the NAAQS and air pollution shows that developments are subject to what is sometimes called big "P" (i.e., partisan) and little "p" (e.g., interagency or office) politics and all of the changing societal, economic, cultural, and other influences related to a particular time and place." Bachmann, 2007: 655.

[43] The Clean Air Act, 42 U.S.C. § 7408 (b)(1)

[44] The Clean Air Act, §108(a)(2)

[45] The Clean Air Act, 42 U.S.C. § 7408 (b)(2)

[46] *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001) 99-1426.175 F.3d 1027 and 195 F.3d 4, affirmed in part, reversed in part, and remanded.

[47] An amicus brief in this case, signed by a bipartisan group of 42 prominent economists, including five Nobel Laureates, argued: "We believe that it would be imprudent for the EPA to ignore costs totally. Not considering costs makes it difficult to set a defensible standard, especially when there is no threshold level below which

According to Schoenbrod:

> The legislative history and reality made clear that EPA was not to set the ambient standards at zero. So EPA would necessarily have to leave some threat to health. The statute evaded the question of how much. The evasion was intentional. As the author of the Clean Air Act, Senator Edmund Muskie, later admitted, "[o]ur public health scientists and doctors have told us that there is no threshold, that any air pollution is harmful. The Clean Air Act is based on the assumption, although we knew at the time it was inaccurate, that there is a threshold. When we set the standards, we understood that below the standards that we set there would still be health effects."[48]

The statutory framing makes it much more difficult to follow the Bipartisan Policy Center's first recommendation that "when federal agencies are developing regulatory policies, they explicitly differentiate, to the extent possible, between questions that involve scientific judgments and questions that involve judgments about economics, ethics and other matters of policy."[49]

While the Act left the decision for setting NAAQS to "the judgment of the [EPA] Administrator," the 1977 amendments required the Administrator to create an "independent scientific review committee," now known as the Clean Air Scientific Advisory Committee (CASAC), with authority not only to review the scientific criteria developed by EPA but to "recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate…" (109(d)(2)) By inviting scientific advisors to make normative recommendations regarding what level is appropriate, this language deliberately confused the distinction between scientific expertise and policy judgment, codifying the input of hidden policy judgment and the is-ought fallacy into the policymaking process.[50]

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health risks disappear." Arrow, K.J. et. Al. National Ambient Air Quality Standards (NAAQS) Brief. Washington (DC): Joint Center, AEI-Brookings Joint Center for Regulatory Studies; 2000 July. Available at: http://www.brookings.edu/~/media/research/files/reports/2000/7/naaqs%20litan/07_naaqs_litan.pdf A former EPA science advisor observed regarding EPA's position that it "is not supposed to take cost into account in promulgating standards," "does any thinking person actually believe that they shouldn't, or don't?" (Dr. Joe Mauderly Comments on the NAAQS Review Process March 3, 2006. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-6-06/$File/sabso-casac_memo_and_comments.pdf)

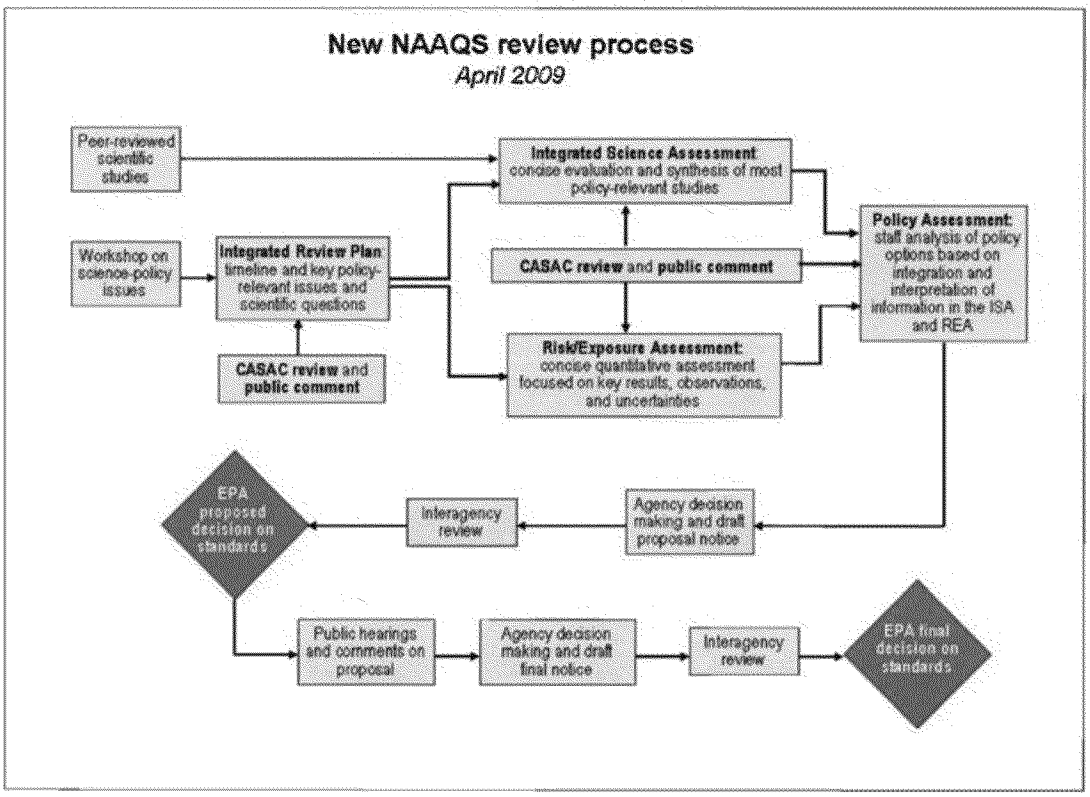
[48] Schoenbrod, D. "Politics and the Principle that Elected Legislators Should Make the Laws." *Harvard J. Law Public Policy* 2003, 26: 270, citing Clean Air Act Amendments of 1977: Hearings Before the Subcomm. on Envtl.Pollution of the Senate Comm. on Env't and Public Works, 95th Cong. 8 (1977).

[49] Bipartisan Policy Center; 2009:4.

[50] The statutory role assigned CASAC makes it difficult to implement the Bipartisan Policy Center's recommendation that, "in general, scientific advisory panels should not be asked to recommend specific regulatory policies." Bipartisan Policy Center; 2009:17.

EPA follows a multi-step process when reviewing and setting NAAQS, as shown in Figure 2.[51] It begins by developing an Integrated Review Plan that identifies the science and policy issues that will be reviewed during the 5-year assessment. Next, EPA conducts extensive reviews of the available science in what is called an Integrated Science Assessment (ISA). Data on the criteria air pollutants are often extensive, with ISAs running to thousands of pages and including reviews of hundreds or thousands of studies. EPA staff use the results of the ISA to develop a risk and exposure assessment (REA) to evaluate potential risks associated with exposures expected at the existing standard and at alternative standards. To accomplish this, agency staff interpret various studies and data to generate a single concentration-response model to predict health effects at different levels of exposure. EPA's formulation and presentation of the studies and data necessarily involves judgments about which studies to consider and which to exclude, as well as assumptions about what models best fit the selected data and how to extrapolate between observed and predicted exposures.

Figure 2



[51] Craig, E. (EPA Acting Administrator for Air and Radiation). Letter to: Kadeli, L. (Acting Assistant Administrator for Research and Development). 2009 May 21. Process for Reviewing National Ambient Air Quality Standards. Available at: http://www.epa.gov/ttn/naaqs/pdfs/NAAQSReviewProcessMemo52109.pdf

Unfortunately, the many risk assessment policy judgments embedded in these models are not transparent. The findings of the ISA and REA depend heavily on how the staff decides to answer such nonscientific questions as what effects are considered "adverse," how far to "err on the side of safety" when determining the appropriate shape of the exposure-response function, and whether observed associations are sufficient to assume causal effects, even in the absence of plausible biological evidence of causality. For example, EPA considers reversible, asymptomatic cellular changes and transient symptomatic effects (such as a cough) to be "adverse" which is clearly a matter of opinion, not something that can be determined solely on the basis of what "is."

Treatment of uncertainty

Perhaps the most pervasive hidden policy judgments regard the treatment of uncertainty. A recent report from the Institute of Medicine observed:

> Uncertainty is inherent in the scientific information upon which health risk estimates are based. Uncertainties enter the health risk assessment process at every step and can be caused by the potential confounders in observational studies, by extrapolation from animal studies to human studies, by extrapolation from high to low dose exposures, by inter-individual variability, and by modeling the relationships between concentrations, human exposures, and human health responses and evaluating the effect of interventions or risk control options on public health risk.[52]

The uncertainties inherent in these assessments can be significant. For example, one key assumption that drives estimates of the effects of exposure to fine particles ($PM_{2.5}$) is that "inhalation of fine particles is causally associated with premature death."[53] EPA assumes a causal relationship based on epidemiological evidence of an association between PM concentrations and mortality, however, correlation does not imply causation (*cum hoc non propter hoc),* and EPA has not been able to identify a biological mechanism to explain the observed correlation. As Dominici, Greenstone and Sunstein observe, "associational approaches to inferring causal relations can be highly sensitive to the choice of the statistical model and set

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[52] Board on Population Health and Public Health Practice; Institute of Medicine. *Environmental Decisions in the Face of Uncertainty,* Committee on Decision Making Under Uncertainty, 2013. Available at: http://www.nap.edu/catalog.php?record_id=12568

[53] Office of Information and Regulatory Affairs. *2012 Report to Congress On the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.* Washington (DC): Office of Management and Budget, Executive Office of the President; 2013:19. Available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/2012_cb/2012_cost_benefit_report.pdf

of available covariates that are used to adjust for confounding."[54] Further, statistical experts have raised questions as to whether the correlation EPA claims is real, and present analysis that suggests EPA's estimates of $PM_{2.5}$ mortalities are a product of model and data choices, rather than a real measured correlation.[55]

Another key assumption on which EPA's estimates of adverse effects hinge is that the concentration-response function for fine particles is linear within the range of ambient concentrations under consideration. Both theory and data suggest that thresholds exist below which further reductions in exposure to $PM_{2.5}$ do not yield changes in mortality response, and that one should expect diminishing returns as exposures are reduced to lower and lower levels.[56] However, EPA assumes a linear concentration-response impact function that extends to concentrations down to zero.[57]

Hidden biases

Based on its policy-related assumptions of a causal, linear, no-threshold relationship between $PM_{2.5}$ exposure and premature mortality, EPA quantifies a number of premature mortalities that will be avoided when concentrations of $PM_{2.5}$ decline as a result of regulation. If any of these assumptions are false (in other words, if no association exists, if the relationship is not causal, or if the concentration-response relationship is not linear at low doses), the effects of reducing $PM_{2.5}$ would be significantly less than EPA's assessments estimate, including zero.

The assumptions of EPA's scientists are not necessarily wrong, but each assumption in the face of uncertainty represents a decision based on policy considerations, not science. The extent to which a resulting standard should err on the side of safety reflects public values that the statute puts in the hands of the EPA Administrator and should be transparent to the public. Yet, these

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[54] Dominici, Francesca, Greenstone, Michael, &Sunstein, Cass R. "Particulate Matter Matters." *Science* Vol 344. April 18, 2014.

[55] See, e.g., Cox L.A. "Reassessing the human health benefits from cleaner air." 2012 May;32(5):816-29. Risk Analysis 2012, and Krstić, G. "A reanalysis of fine particulate matter air pollution versus life expectancy in the United States," J Air Waste Manag Assoc. 2013 Feb;63(2):133-5. Cox's statistical analysis suggests with a greater than 95% probability that no association exists, and that instead, EPA's results are a product of its choice of models and selected data, rather than a real measured correlation. Krstić's reanalysis shows that "the statistical significance of the correlation is lost after removing one of the metropolitan areas from the regression analysis, suggesting that the results may not be suitable for a meaningful and reliable inference."

[56] See, for example Texas Commission on Environmental Quality, "$PM_{2.5}$ Standards may be set Lower than Scientifically Justifiable," noting that " extrapolations [to current exposure levels] can be contrary to the basic principles of toxicology where the biological threshold (a level below which no effect is apparent) is a key concept." Available at: http://www.tceq.texas.gov/assets/public/comm_exec/pubs/pd/020/2013/Outlook-Mar-2013-x.pdf

[57] See final regulations governing $PM_{2.5}$ (Available at: http://www.gpo.gov/fdsys/pkg/FR-2013-01-15/pdf/2012-30946.pdf); Nitrogen dioxide (Available at: http://www.gpo.gov/fdsys/pkg/FR-2010-02-09/html/2010-1990.htm); and Ozone (Available at: http://www.gpo.gov/fdsys/pkg/FR-2008-03-27/html/E8-5645.htm)

uncertainties are not presented in the ranges of risks reported. Cox's review of EPA's ozone NAAQS proposed in December 2014 finds:

> EPA has not quantified crucial model uncertainties. Therefore, confidence intervals calculated assuming that the models used are correct are misleadingly narrow and EPA has provided policy makers with no basis for confident predictions about how different changes in the ozone standard would probably affect public health.[58]

One former EPA science advisor called for "a more explicit characterization of uncertainty in estimates of causality and exposure-response relationships … for both primary and secondary standards," noting:

> At present, assessments of "uncertainty" are almost completely focused on the mathematical uncertainty of effects estimates (i.e., confidence intervals on measurements of exposures and effects). This is important of course, but I would like to see a more rigorous discussion of "certainty" in a broader sense. For example, how do the magnitudes of health effects of air pollution rank in comparison to other voluntary and involuntary health risks? Because air pollutants seldom, if ever, exert novel effects, what portion of the total public health effect is plausibly attributable to a pollutant (or to pollution)? What do we know about the relative benefits, and cost-benefit relationships, of different approaches to reducing health burdens that are exerted in part by air pollution? I care not that these issues might not fall within many folks' definition of "scientific information," or that EPA is not supposed to take cost into account in promulgating standards (does any thinking person actually believe that they shouldn't, or don't?). We delude ourselves and miss opportunities to inform policy makers and promote a rational public understanding of risk if we continue to view the "uncertainty" issue as solely one of statistical methodology and data quality, while advocating for the special importance of the particular effects … by which we make our living.[59]

These uncertainties are further hidden from policy makers when, after the ISA and REA are completed, EPA staff prepares a Policy Assessment (formerly called the Staff Paper) that "bridges the gap" between the ISA and REA, and develops a set of policy options to present to the Administrator. The Policy Assessment "presents staff conclusions regarding the adequacy of

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[58] Cox, 2015

[59] Mauderly J. "Comments on the NAAQS Review Process," March 3, 2006. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-6-06/$File/sabso-casac_memo_and_comments.pdf

the current suite of standards as well as potential alternative standards for [the Administrator's] consideration."[60] This presentation of staff's judgment (informed by CASAC) regarding what is "requisite to protect public health" further obfuscates the line between science and policy judgment and virtually compels the staff to fall prey to the is-ought fallacy.[61] The Policy Assessment presents policy options framed with vague but portentous language, such as "the weight of the evidence" and "a consensus among scientific advisors." Uncertainty at lower levels of exposure is typically discussed vaguely and qualitatively to justify setting levels greater than zero.[62] As a result, the policy options presented by EPA staff, which clearly include nonscientific judgments, attempt to constrain the ultimate decision of the Administrator, who is the accountable decision maker under the Clean Air Act. The staff recommendations, shrouded in scientific language, create a science charade.

One would have difficulty discerning the large impact of nonscientific decisions just by reading the recommendations. For example, the Policy Assessment EPA staff prepared for the fine particle standards set in December 2012 states:

> Taking into account both evidence-based and risk-based considerations, staff concludes that consideration should be given to revising the current annual $PM_{2.5}$ standard level of 15 $\mu g/m^3$ to a level within the range of 13 to 11 $\mu g/m^3$. Staff further concludes that the evidence most strongly supports consideration of an alternative annual standard level in the range of 12 to 11 $\mu g/m^3$.[63]

Public communication

Documents prepared to support executive requirements for economic analysis and to communicate with the public also suffer from a science charade. EPA staff prepares a Regulatory Impact Analysis (RIA), and publicly releases it concurrently with proposed and final

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[60] United States Environmental Protection Agency, Office of Air and Radiation. Policy Assessment for the Review of Particulate Matter National Ambient Air Quality Standards, Second External Review Draft. Washington (DC): United States Environmental Protection Agency; 2010 June. Available at: http://www.epa.gov/ttnnaaqs/standards/pm/data/20100630seconddraftpmpa.pdf

[61] A committee charged with identifying PM research needs did not look at the adequacy of scientific basis for a NAAQS standard "because the process of setting such standards also involves legal requirements and policy choices that the present committee was neither charged nor constituted to address." Committee on Research Priorities for Airborne Particulate Matter, National Research Council. Research Priorities for Airborne Particulate Matter. Washington (DC): National Academic Press; 1998.

[62] For example, the December 2014 ozone proposal argues that "setting a standard below 0.065 ppm, down to 0.060 ppm, would inappropriately place very little weight on the uncertainties in the health effects evidence and exposure/risk information." 79 FR 65236

[63] Office of Air and Planning. Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards. United Stated Environmental Protection Agency; 2011. Available at:http://www.epa.gov/ttnnaaqs/standards/pm/data/20110419pmpafinal.pdf

determinations. RIAs are required by executive order to "assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."[64] This document is not depicted on the decision diagram (shown above), and EPA is explicit that "the RIA is done for informational purposes only, and the final decisions on the NAAQS are not in any way based on consideration of the information or analyses in the RIA." The results of the RIA feature prominently in EPA press releases, however. For the December 2012 $PM_{2.5}$ NAAQS, EPA announced that meeting the Administrator's selected standard of 12.0 $\mu g/m^3$ standard would avoid between 460 and 1,000 premature deaths per year. However, the RIA also indicated that further tightening—going from a standard of 12 $\mu g/m^3$ to 11 $\mu g/m^3$—would yield additional life savings of 1,040 to 2,300 mortalities per year.

Given that these two data points suggest the incremental life savings associated with a reduction from 12 $\mu g/m^3$ to 11 $\mu g/m^3$ are greater than those associated with a reduction from 13 $\mu g/m^3$ to 12 $\mu g/m^3$, it is curious that the Policy Assessment did not recommend, or at least examine, standards below 11 $\mu g/m^3$. Neither the Policy Assessment nor RIA explains this, nor the Administrator's decision to set a standard of 12 $\mu g/m^3$, which these documents suggest leave between 580 and 1,300 lives unprotected.

Instead the RIA justifies the standards as follows:

> This action provides increased protection for children, older adults, persons with pre-existing heart and lung disease, and other at-risk populations against an array of $PM_{2.5}$-related adverse health effects that include premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease. … The revised suite of $PM_{2.5}$ standards also reflects consideration of a quantitative risk assessment that estimates public health risks likely to remain upon just meeting the current and various alternative standards. Based on this information, the Administrator concludes that the current primary $PM_{2.5}$ standards are not requisite to protect public health with an adequate margin of safety, as required by the Clean Air Act, and that these revisions are warranted to provide the appropriate degree of increased public health protection.

As a former senior EPA air office official observed about the 1997 standard:

> Nuance and uncertainty were also lacking in EPA's public communications after proposal. The agency's sound bite was that the science demanded the revisions. Although it was true that EPA's assessment of the science found a need to tighten

[64] Executive Order 12866, Section 1(a). 1993

> the standards, the *particular* standards proposed were obviously not wholly determined by science.[65]

The statutory language forces EPA staff to present vague justifications that are careful not to express considerations of economic tradeoffs. Yet, because there is no threshold below which models do not predict health effects, short of eliminating these criteria pollutants altogether, science alone cannot identify what standard along the modeled linear no-threshold dose-response function would be "requisite to protect public health." And yet, all involved regularly participate in a science charade in which EPA sets standards at non-zero levels and justifies the decision based solely on arguments that are characterized as strictly scientific.

Clean Air Scientific Advisory Committee

The Clean Air Scientific Advisory Committee is a seven-member committee the Clean Air Act established "to provide advice and recommendations to EPA."[66] Members are chosen on the basis of their scientific expertise, generally serve for two consecutive three-year terms, and meet 12 to 15 times a year. Their expertise is often supplemented by panels of 20 or more experts on the health and environmental effects of the specific pollutants that are under review. As Figure 2 shows, these CASAC panels are involved at all stages of the NAAQS development process.

As recent reports from the Keystone Center and BPC have observed, scientific advisory panels can provide valuable input to agency decision making. However, they caution that "in general, scientific advisory panels should not be asked to recommend specific regulatory policies"[67] or "to answer questions that go beyond matters of scientific judgment."[68] As noted above, the Clean Air Act authorizes CASAC to recommend "new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate." Similar to the problem discussed above with respect to EPA staff, this allows CASAC to make hidden policy judgments couched in scientific terms and attempt to influence the Administrator's final policy decision. Note that the Act does not go so far as to require CASAC's *approval* of the Administrator's policy choice, and a Congressional Research Service (CRS) review of the history of CASAC observed that, until recently, committees eschewed the role of approver:

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[65] Bachmann, 2007: 687

[66] See EPA Science Advisory Board. United States Environmental Protection Agency Charter. Environmental Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/currentcharter?OpenDocument

[67] Bipartisan Policy Center; 2009: 5.

[68] The Keystone Center. Research Integrity Roundtable. *Improving the Use of Science in Regulatory Decision Making: Dealing with Conflict of Interest and Bias in Scientific Advisory Panels, and Improving Systematic Scientific Reviews.* Washington (DC): The Keystone Center; 2012: 8. Available at: https://www.keystone.org/images/keystone -center/spp documents/Health/Research%20Integrity%20Rountable%20Report.pdf

> CASAC panels have a nearly 30-year history of working quietly in the background, advising the agency's staff on NAAQS reviews, and issuing what were called "closure letters" on the agency documents that summarize the science and the policy options behind the NAAQS. Closure letters have been used by CASAC panels to indicate a consensus that the agency staff's work provides an adequate scientific basis for regulatory decisions. The science and policy documents, written by EPA staff, generally have gone through several iterations before the scientists were satisfied, but, with the issuance of a closure letter, CASAC has in past years removed itself from the process, leaving the formal proposal and final choice of standards to the Administrator.[69]

This CASAC behavior of detaching itself from the final policy process was consistent with Weinberg's recommendation in his landmark paper on "trans-science," in which he observed:

> Though the scientist cannot provide definite answers to trans-scientific questions any more than can the lawyer, the politician or a member of the lay public, he does have one crucially important role: to make clear where science ends and trans-science begins.[70]

Recent CASAC panels take forceful policy positions

Going beyond the more subtle hidden policy judgment asked of CASAC in the statute, recent Committees have been more aggressive at advocating their public policy decisions and openly criticized administrators who deviate from their recommendations. For instance, in 2006, after the EPA Administrator issued standards outside the range recommended by CASAC, the committee took the unprecedented action of writing to the Administrator that the standard "does not provide an 'adequate margin of safety... requisite to protect the public health' (as required by the Clean Air Act)…"[71]

In an excellent example of a science charade, in 2008, CASAC's ozone review panel stated in a letter to EPA that its members:

> *do not endorse the new primary ozone standard as being sufficiently protective of public health.* The CASAC — as the Agency's statutorily-established science advisory committee for advising you on the national ambient air quality standards

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[69] McCarthy, James. E. "Air Quality Standards and Sound Science: What Role for CASAC?" CRS Report RL33807, January 19, 2007:2. Available at: http://www.policyarchive.org/handle/10207/bitstreams/3076.pdf

[70] Weinberg, Alvin M. 1972.

[71] Letter of Rogene Henderson et al. (of the Clean Air Scientific Advisory Committee) Letter to: to Hon. Stephen L. Johnson EPA Administrator) regarding the PM NAAQS, Sep 2006. Available at: http://www.epa.gov/sab/pdf/casac-ltr-06-003.pdf. Italics in original.

> — *unanimously recommended* decreasing the primary standard to within the range of 0.060–0.070 ppm. It is the Committee's consensus scientific opinion that your decision to set the primary ozone standard above this range fails to satisfy the explicit stipulations of the Clean Air Act that you ensure an adequate margin of safety for all individuals, including sensitive populations.[72] (emphasis in original)

The CRS report observes that CASAC's recent advocacy deviates from its past practice, when it refrained from objecting to policy decisions that differed from its recommendations. It points to two examples where EPA administrators took no action to revise standards, despite staff and CASAC recommendations that the standards be tightened: in 1990, with regard to the lead NAAQS, and in 1996, with regard to the sulfur dioxide NAAQS. CASAC did not object in either case.[73] In a more recent case, CASAC did not publicly object to Administrator Lisa Jackson's decision not to revise the primary standard for coarse particles (PM_{10}) in 2012, despite its conclusion that "it is clear that the current PM_{10} standard is not adequate to protect the public health,"[74] and recommendation "that the primary standard for PM_{10} should be revised downwards."[75]

Distinction between science and policy blurred

The more activist stance of recent committees clearly crosses the line between science and policy. In response to an EPA workgroup effort to improve the NAAQS process, several former CASAC members expressed concerns about CASAC's ability to distinguish between science and policy recommendations.

Former CASAC member, Dr. Ellis Cowling, cautioned:

> The responsibility of scientists, engineers, and policy analysts is to understand and clearly communicate the scientific facts and uncertainties and to describe expected outcomes objectively. Deciding what to do involves questions of

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[72] Letter of Rogene Henderson et al. of the Clean Air Scientific Advisory Committee to Hon. Stephen L. Johnson, EPA Administrator, April 7, 2008, Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/4AF87643243312888525742 50069E494/$File/EPA-CASAC-08-009-unsigned.pdf . This may be one of the best examples of a nonscientific recommendation being couched as being based purely "scientific opinion."

[73] McCarthy, James. E. 2007:9.

[74] Dr. Jonathan M. Samet et al. letter of the Clean Air Scientific Advisory Committee to Hon. Lisa Jackson, EPA Administrator. May 17, 2010. EPA-CASAC-10-011

[75] Dr. Jonathan M. Samet et al. letter of the Clean Air Scientific Advisory Committee to Hon. Lisa Jackson, EPA Administrator. September 10, 2010. EPA-CASAC-10-015

> societal values where scientists, engineers, and policy analysts have no special authority. [76]

Former chairman, Bernard D. Goldstein, M.D., reflected on his experience:

> I found a sense among several CASAC members that the CASAC is responsible for approving the proposed standards rather than giving advice and recommendations. The Agency should make clear to CASAC what they require in terms of scientific advice and what they consider to be policy issues, on which they do not need advice. The line between science and policy is not always apparent, and this difference should be made clear in the charge questions given to CASAC.[77]

Dr. George T. Wolff made a similar point, observing:

> The selection of a particular level for a standard is a policy judgment. CASAC's job is to insure that the range, form and averaging time recommended in the Staff Paper have a scientific basis. In questioning the recommendations in the January 17, 2006 NPRM, CASAC has clearly overstepped their boundaries and ventured into the policy arena.[78]

Former CASAC chairman, Dr. Joe Mauderly, observed:

> Neither scientists nor policy makers want to draw the line [between science and policy], or to define it or admit to it. CASAC meetings are rife with discussions about how its pronouncements will affect policy, and scientist advocates (on CASAC and its panels, as well as others) game the system to achieve their ideological policy goals. When EPA proposes or promulgates standards, it is reluctant to state clearly how science and policy enter into the decision—it wants to portray that all is based on science. These behaviors are absolutely understandable—most scientists are convinced that they know what's best for the

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[76] Cowling, Ellis. "Comments on the NAAQS Review Process," March 3, 2006. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-16-06/$File/sabso-casac_memo_and_comments.pdf

[77] Goldstein, Bernard, M.D. "Comments on the NAAQS Review Process." March 3, 2006. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-16-06/$File/sabso-casac_memo_and_comments.pdf

[78] Wolff, George T. "Comments on the NAAQS Review Process," March 3, 2006. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-16-06/$File/sabso-casac_memo_and_comments.pdf

> country, and EPA Administrators don't want to admit to any motive other than the "best science."[79]

The bald consideration of nonscientific factors by CASAC in making its recommendations is illustrated in the committee's deliberations on the 2007 lead NAAQS. Members objected to the standard the Administrator was considering because "it wouldn't create any pressure on any person producing lead in the environment today from reducing because it doesn't leave any more exceedances than the current standard."[80] They presented various non-science arguments in support of their preferred, more stringent, policy option, including the "need to regulate it at a level that causes public attention to come to the problem," and that "causes the most severe polluters to have to put in additional controls..."[81]

The Committee discussions appear to suffer from the symptoms identified in the organizational behavior literature regarding group behavior, including

> close-mindedness, involving a collective effort "to rationalize" so as to discount warnings or information that might lead to reconsideration, and stereotyped views of enemies, as too evil to warrant efforts at negotiation or "too weak and stupid to counter" the group's…choices.[82]

Transcripts of CASAC's 2007 meetings on the lead NAAQS decisions, for example, reveal that its members had few real disagreements with each other or with EPA staff. This means the committee likely lacked the value of independent analysis and challenge that is so essential to the scientific method. The discussions appear to exhibit the "asymmetrical trust" symptomatic of insular group dynamics that perpetuates an "us vs. them" mindset.[83] While committee members treat each other and EPA staff, with whom they often have a close working relationship, with respect, their comments reflect a "stereotyped view of enemies," including policy officials, other agency staff, and the public.[84] For example, committee members objected strongly to providing the broader public an opportunity to comment on issues not preapproved by the committee, and members expressed the view that anyone not part of the committee likely had a conflict of interest.[85]

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[79] Mauderly, J. "Comments on the NAAQS Review Process." March 3, 2006. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-16-06/$File/sabso-casac_memo_and_comments.pdf

[80] US EPA CASAC Lead Review Panel Public Advisory Meeting 2/7/07 CCR # 14610-13 page 15

[81] US EPA CASAC Lead Review Panel Public Advisory Meeting 2/7/07 CCR # 14610-13 pages 15-16

[82] Sunstein, Cass. Going to Extremes: How Like Minds Unite and Divide. New York: Oxford University; 2009:86.

[83] Sunstein, 2009.

[84] US EPA PUBLIC MEETING 12/12/07 CCR# 15740-1 Page 145

[85] US EPA PUBLIC MEETING 12/12/07 CCR# 15740-1 Page 33. Members objected to seeking public comment on issues because that put commenters "on an equal basis with the CASAC," and constituted "taking a group that has a clear conflict of interest and treating them as though they are equal to CASAC."

CASAC panels may lack diversity

Former CASAC chair George Wolff has raised concerns that EPA's selection of panel members exacerbates this problem. He noted several differences between the panel reviewing the 1997 fine particle NAAQS and the 2006 standard, including a change in the composition of the panels:

> In the 1994-96 review, there were a number of Panel members who were skeptical that the epidemiology studies demonstrated cause and effect including one biostatistician and one epidemiologist who were not authors of the studies that found statistical links between PM and health endpoints. As a result, the Panel expressed "a diversity of opinion."
>
> When the new Panel was formed, most of the Panel members who supported a causal role in 1996 were invited back to be on the new panel. Most of the skeptics were not. Instead they were replaced by individuals that, on the balance, were more supportive of the Agency's position. In fact, by the time the Panel concluded the review, seven out of 22 members had been authors of papers that purport causality. No epidemiologist or statistician who questioned causality was a member of the Panel. This lack of balance on the Panel predetermined the outcome of the review.[86]

Former CASAC chair Roger McClellan expressed concern that CASAC panel "membership has been excessively dominated by scientists that to a large extent have developed the scientific information contained in the documents [they are charged with reviewing]," noting that "in some cases, the individuals have already offered opinions as to how the science should be used to set…a more stringent standard based on their science."[87] According to a Congressional investigation, 16 of the 20 members of the CASAC panel charged with reviewing the science in support of the 2015 ozone NAAQS had conducted studies they were supposed to evaluate, and 14 of the 20 members had been principal or co-investigators for EPA grants totaling more than $120 million.[88]

CASAC's treatment of uncertainty

The unabashed crossing of the line between science and policy is also evident in the treatment of uncertainty and risk communication. Although the members of CASAC recognize the

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[86] Wolff, 2006.

[87] Committee on Science, Space, and Technology hearing, "Quality Science for Quality Air," 112th Cong., 1st sess, October 4, 2011. http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70587/html/CHRG-112hhrg70587.htm

[88] Lamar Smith, Chairman Committee on Science, Space, and Technology letter to EPA Administrator letter to Gina McCarthy. March 19, 2014. http://science.house.gov/sites/republicans.science.house.gov/files/documents/03-19-2014%20Smith%20to%20Administrator%20McCarthy.pdf

uncertainty inherent in supporting analyses, the drive for a narrow range of policy options may limit their willingness to quantify the full uncertainty range or to explore the quantitative implications of alternative science policy choices. For example, the 2007 lead NAAQS transcript reveals that CASAC members were initially critical of an EPA method for measuring health effects on the grounds that it was oversimplified and didn't rely on current data and modeling techniques. When EPA staff pointed out that this simplified method would more likely lead policy makers to a level already preferred by CASAC, compared to the more sophisticated method, CASAC members dropped their objections.[89]

CASAC's position on how to manage uncertainty is another example of a hidden policy decision. The strongly-worded letter objecting to the Administrator's policy decision on the 2006 $PM_{2.5}$ NAAQS, states that, "while there is uncertainty associated with the risk assessment for the $PM_{2.5}$ standard, this very uncertainty suggests a need for a prudent approach to providing an adequate margin of safety."[90]

Yet, this assertion that uncertainty demands a "prudent" policy decision stands in contrast to the statement of former chairman, Bernard Goldstein, who told EPA:

> How one deals with the uncertainties is a policy issue. One can say that a lot of uncertainty suggests being more conservative to be sure we are "safe." Another policy might be that a large amount of uncertainties means that we cannot select appropriate levels until we have more information. In any case, the amount of uncertainty should be fully addressed and central estimates should be given as well as the upper and lower confidence limits. Again, the policy decisions made should be explicit and clearly stated in public.[91]

As this discussion has shown, CASAC members' views of their role has evolved over time to be increasingly involved in the policy decision as to the level at which the standard should be set, yet still present such a recommendation as "science." This may be due, in part, to the individuals EPA staff select to serve on the committee and panels,[92] and the charge EPA gives them.[93] As discussed further below, members' views constrain policy officials and the courts, and influence public opinion. When differences of opinion about policies are cast as scientific disagreements, accusations of politicized science arise. However, as the BPC noted, "some disputes over the 'politicization' of science actually arise over differences about policy choices that science can

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[89] US EPA PUBLIC MEETING 12/12/07 CCR# 15740-1 Page 67

[90] CASAC letter to EPA Administrator Johnson, September 29, 2006. EPA-CASAC-LTR-06-003

[91] Goldstein, 2006.

[92] Wolff, 2006.

[93] As former CASAC chair Bernard D. Goldstein, M.D. observed, EPA "should make clear to CASAC what they require in terms of scientific advice and what they consider to be policy issues, on which they do not need advice." Comments on the NAAQS Review Process March 3, 2006.

inform, but not determine."[94] The role of CASAC in setting NAAQS illustrates processes that both perpetuate hidden policy judgments and science charades, inviting use of the is-ought fallacy.

Policy Officials

Under the Clean Air Act, it is the EPA Administrator (and thus the president at whose pleasure she serves) who is ultimately responsible for issuing primary NAAQS, "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health."[95] Similarly the Act requires the Administrator to set secondary NAAQS at a level which, in her judgment, "is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air."[96] Though EPA staff prepares a regulatory impact analysis, including an assessment of the likely costs and benefits of achieving different standards, the Administrator does not consider it, and staff does not present it to her.[97]

As discussed above, in choosing the level of the standard, the Administrator faces pressure from EPA staff and CASAC members. In addition, outside groups, including state and local governments (which are responsible for implementing and achieving the standard), potentially regulated parties, non-governmental organizations (NGOs), and Congress attempt to influence the Administrator's decision. Also, other Administration officials (who often are responsible for implementing competing policy goals and may also be hearing from constituencies outside the government) may seek to sway the Administrator's determination.

The Administrator deviates from the recommendations of the Policy Assessment and CASAC at her peril.[98] If she makes a decision outside of the staff and CASAC recommendations presented to her, the Administrator runs the risk that NGOs will file suit to overturn her decision (possibly with support from EPA staff, who may even work with the Justice Department to make sure that the Administrator loses the lawsuit).[99] Particularly in the context of a science charade, public disagreement also puts policy officials at a public relations disadvantage, when exercising policy

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94 Bipartisan Policy Center; 2009.

95 42 USC § 7409(b)(1)

96 42 USC § 7409(b)(2)

97 According to the Regulatory Impact Analysis conducted in association with the final particulate matter standard set in December 2012, "[i]n NAAQS rulemaking, the RIA is done for informational purposes only, and the final decisions on the NAAQS in this rulemaking are not in any way based on consideration of the information or analyses in the RIA."

98 CASAC letter to EPA Administrator Johnson, September 29, 2006. EPA-CASAC-LTR-06-003

99 See, for instance, Kelli Hayes, "Sue and Settle: Forcing Government Regulation Through Litigation," University of Dayton Law Review, 40:105 (2015) https://www.udayton.edu/law/_resources/documents/law_review/vol40_no1/sue_and_settle.pdf

judgment is characterized as going against science.[100] For instance, both Presidents Obama and Bush were accused of politicizing science when they chose not to regulate ozone at the levels recommended by CASAC and the staff Policy Assessment.[101] Particularly when it comes to environmental and health experts, "it is difficult for political executives to reject their recommendations."[102]

It is important to point out that hidden policy judgments by scientists not only discourage policy makers from setting standards higher than those recommended by staff, but lower as well. At one point in the development of the 2008 lead NAAQS, consideration was given to seeking public comment on whether zero was appropriate as the lower end of the range at which to set the standard. Given the lack of a threshold in health effects, and CASAC's unanimous and vocal opinion that lead remained a very serious public health risk, some policy officials questioned the justification for setting any standard above zero.[103] Available data and modeling made it difficult for the Administrator to conclude that a lead ambient air quality standard of 0.15 ug/m^3 was "requisite" to protect public health with an "adequate margin of safety," but 0.5 ug/m^3 or 0 ug/m^3 was not. EPA Air Office staff (perhaps correctly) perceived this as an effort to expose the inherent contradictions in the NAAQS provisions of the Clean Air Act, and they strongly objected to it. In the face of staff opposition, Administrator Johnson chose not to present the wider range for public comment. It is much safer, from a political and staff management viewpoint, for Administrators to stay inside the policy box EPA staff and CASAC have created for them.[104]

Sometimes the influence of the staff and CASAC is so strong that the decision requires an explicit and public policy judgment to be made above the Administrator and carefully explained to the public. In 2008, during the interagency review of EPA's ozone NAAQS, disagreement over the form of the secondary "welfare" standard was so contentious that President Bush ultimately had to step in to resolve it.[105] Deliberations within the executive are generally not public, but in this case the Administrator was very reluctant to select a form different from that

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[100] See, for example, Union of Concerned Scientists blog, "EPA Air Pollution Decision Threatens Public Health: Science Disregarded, Misrepresented on Particulate Matter Standard." http://www.ucsusa.org/scientific_integrity/abuses_of_science/epa-air-pollution-decision.html

[101] See for example: http://switchboard.nrdc.org/blogs/jwalke/the_president_sabotages_clean.html

[102] R. Shep Melnick, *Regulation and the Courts: The Case of the Clean Air* Act, Brookings Institution: Washington DC (1983), p. 295.

[103] Authors' personal experiences in NAAQS discussions as administrator of OIRA and deputy administrator of EPA.

[104] Mauderly, 2006, noting "most scientists are convinced that they know what's best for the country, and EPA Administrators don't want to admit to any motive other than the 'best science.'"

[105] In the rarely-used section 7 of E.O. 12866, "conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President."

recommended by staff.[106] Out of respect for his concern, correspondence between the OIRA Administrator and Deputy Administrator of EPA explaining their respective positions was shared publicly on the agencies' websites,[107] and the final preamble to the rule acknowledged the disagreement and that it was the President who concluded what the appropriate form of the standard should be.[108]

States

States have a great interest in the level of the NAAQS. Under the Act, EPA establishes the allowable concentration of each pollutant in the ambient air, but the burden falls on states to develop implementation plans that achieve those levels. Under the statute, areas not in attainment with the standard face restrictions on economic growth.[109] If a state fails to develop a plan that meets with EPA's approval, the agency may impose a more restrictive (and possibly punitive) Federal Implementation Plan; the federal government can also withhold federal highway funding from states chronically out of attainment, although it has not yet done so. By imposing the obligation of NAAQS attainment on the states, EPA effectively commandeers, not only the considerable state resources that are needed to carry out the program, but also the much broader array of police powers that states enjoy. State Implementation Plans may include land use controls and other regulatory options that are not available to EPA under the Constitution, let alone the Clean Air Act.

And yet, it may not be enough. Since the EPA Administrator cannot consider the feasibility of achieving a standard when revising it, the NAAQS for several criteria pollutants have put large geographic areas out of attainment, particularly the more densely populated urban areas of the Northeast and Pacific coast, with no realistic options for successful implementation. Los Angeles and surrounding areas, for example, cannot comply with the 0.08 ppm ozone NAAQS set in the 1990s, to say nothing of the tighter 0.075 ppm standards established in 2008 or the even tighter 0.070 ppm standard[110] set in 2015.[111]

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[106] Authors' personal experiences in NAAQS discussions as administrator of OIRA and deputy administrator of EPA.

[107] See memo from Susan Dudley to Steve Johnson on OIRA's RegInfo site: http://www.reginfo.gov/public/postreview/Steve_Johnson_Letter_on_NAAQs_final_3-13-08_2.pdf.

[108] Environmental Protection Agency. "National Ambient Air Quality Standards for Ozone." 73 FR 16497. http://www.gpo.gov/fdsys/pkg/FR-2008-03-27/pdf/E8-5645.pdf

[109] Greenstone, M., List J.A., Syverson, C. "The Effects of Environmental Regulation on the Competitiveness of U.S. Manufacturing." MIT Center for Energy and Environmental Policy Research working paper. CEEPR WP 2012-013; 2012.

[110] https://www.gpo.gov/fdsys/pkg/FR -2015-10-26/pdf/2015-26594.pdf

[111] Environmental Protection Agency. http://www.epa.gov/groundlevelozone/designations/2008standards/final/finalmap.htm

Ironically, the states unable to comply with current standards are typically more supportive of stricter standards than the states that are in attainment. Eight of the fifteen states that filed comments that supported tightening the ozone NAAQS set in 2008 were unable to meet the existing standard, and would certainly not be able to comply with a tighter standard. Not only do non-attainment states file comments on proposed standards, but several recently threatened to sue EPA for failure to issue more stringent standards.[112] In contrast, of the six states that filed comments that opposed tightening the ozone NAAQS, four were in "maintenance," meaning they had recently achieved compliance.

This may not be as surprising as it initially appears. Nonattainment areas have trouble attracting new businesses, and their citizens suffer (or move) when potential job-creating industries settle in other states. Greenstone et al. have quantified the economic losses associated with nonattainment status, finding that

> total factor productivity (TFP) among plants that emit the targeted pollutants... declines by 4.8 percent for polluting plants in nonattainment counties. This corresponds to an annual economic cost from the regulation of manufacturing plants of roughly $21 billion in 2010 dollars. This translates into a loss of more than $450 billion over the studied period [1972 to 1993].[113]

From the perspective of nonattainment areas, strict standards that throw areas in other states out of attainment "level the playing field." Areas that are already out of attainment have little to lose from stricter standards, but they gain relative to competing states which will have nonattainment conditions imposed on them. Even though parts of California have been unable to meet the ozone NAAQS set in the 1990s, California legislators were the most vocal proponents of yet more stringent ozone standards in 2008, accusing EPA of considering factors other than public health in setting the NAAQS.[114]

Absent a federal mandate, states would be expected to compete with each other in providing environmental quality, as well as economic prosperity. State officials know that voters demand environmental quality, and they also know that it affects property values—which in turn affect the state tax base, including funding for local governments and school districts. The overlay of mandatory federal NAAQS, however, suppresses and redirects this virtuous interstate competition. EPA's oversight of NAAQS attainment acts in much the same way that economic regulation affects an otherwise competitive industry.[115] Instead of competing in the provision of air quality, states may be motivated to direct their energies to lobbying the regulator, seeking

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[112] http://www.epa.gov/ttn/naaqs/standards/ozone/data/ENV_DEFENSE-650358-v1-Ozone_NAAQS_decision.pdf

[113] Greenstone & Syverson, 2012.

[114] http://online.wsj.com/article/SB12111592173000245 3.html

[115] See discussion regarding "presumption against economic regulation" in OMB Circular A-4, "Regulatory Analysis." Available at: http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf

lenient treatment for themselves while advocating economically stifling restrictions on their competitors. State politicians present themselves to the voters as high-minded, if ineffectual, champions of environmental quality.[116]

Courts

As noted earlier, the United States Supreme Court confirmed EPA's statutory interpretation that it cannot consider costs when setting NAAQS.[117] EPA notes, however, that the Act "does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, *see Lead Industries Ass'n v. EPA*, 647 F.2d at 1156 n.51, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety."[118]

States supporting more stringent standards are joined by NGOs, such as the American Lung Association and the Natural Resources Defense Council, in seeking a remand of EPA standards on the grounds that they are not adequately protective according to statutory criteria.[119] States supporting less stringent standards sue EPA seeking to have NAAQS vacated because the Agency did not establish that the standards are requisite to protect health and welfare under the meaning of the Act. These states are supported by industry litigants (such as the U.S. Chamber of Commerce, the Utility Air Regulatory Group, and the National Association of Home Builders).[120] Given the statutory construction, none of the litigants openly express policy arguments for preferring one standard over another, but rather they couch their legal arguments in terms of science—highlighting differences between CASAC's recommended levels and the Administrator's choice, and debating what science is needed to determine what levels are "requisite" to protect public health and welfare, and what qualifies as an "adequate margin of safety."[121]

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[116] This behavior is consistent with economic theory regarding regulation, particularly the colorfully named "bootlegger and Baptist" theory. Smith, Adam, Yandle, Bruce. *Bootleggers and Baptists: How Economic Forces and Moral Persuasion Interact to Shape Regulatory Politics.* Cato Institute. 2014.

[117] *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 465–472, 475–76 (2001)

[118] National Ambient Air Quality Standards for Particulate Matter; Final Rule. January 15, 2013. Available at: http://www.gpo.gov/fdsys/pkg/FR-2013-01-15/pdf/2012-30946.pdf

[119] See, for example, OPENING BRIEF OF STATE PETITIONERS in STATE OF MISSISSIPPI, et al v. EPA. USCA Case #08-1204 Document #1369352 Filed: 04/17/2012, arguing that EPA's 2008 ozone NAAQS be remanded "on grounds that the primary NAAQS does not protect public health with an adequate margin of safety and the secondary NAAQS does not protect public welfare, as required under the Act"; and PROOF BRIEF FOR ENVIRONMENTAL PETITIONERS in STATE OF MISSISSIPPI, et al v. EPA. USCA Case #08-1204 Document #1369354 Filed: 04/17/2012.

[120] See, for example, JOINT OPENING BRIEF OF PETITIONER STATE OF MISSISSIPPI AND INDUSTRY PETITIONERS in STATE OF MISSISSIPPI, et al v. EPA. USCA Case #08-1204 Document #1369355 Filed: 04/17/2012.

[121] Bachmann notes that "in the pre-proposal period, [interest] groups tried to influence the scientific basis for EPA's decisions," while "during the post-proposal period, the emphasis shifted to providing Congress, local elected

Lower courts also help enforce the Act's requirement for reviews of the standards every five years. In response to litigation over missed statutory deadlines, the government will enter into consent decrees that impose judicial deadlines for issuing standards.[122] Particularly given the steps involved in preparing the regulatory record in NAAQS proceedings, these deadlines constrain the opportunity for meaningful public consultation and interagency review.[123] EPA often submits draft regulations to OIRA for interagency review just days before such deadlines.[124]

Even as the courts drive the NAAQS process forward and enforce the Clean Air Act's procedural requirements, they avoid questioning anything in the administrative record that is characterized as science. This understandable deference to agency fact-finding has a curious result: it tends to limit the EPA Administrator's ability to exercise the policy discretion that the Congress has entrusted to her. If she makes a policy decision that conflicts with the policy preferences of EPA staff or science advisors, there will be a conflict in the administrative record, falsely framed as a policy choice inconsistent with the "science." Judges find it easy to vacate administrative decisions in such circumstances. Whatever doubts she may have about the merits of the options placed before her, the safest thing for the Administrator to do is simply acquiesce in the recommendations of her staff. The deference that courts properly owe to the political branches is captured, instead, by an unelected bureaucracy and outside science advisors due to the science charade.

Summary

The NAAQS process exemplifies the incentives at work that compel every party to the regulation to engage in hidden policy judgment and the science charade. Congress directs EPA to set the standards to achieve noble goals, but encourages the politicization of science by restricting the agency from openly considering relevant nonscientific factors. Combined with tight deadlines, the statutory language permits Congress to take credit for laudable public goals, while blaming the executive branch's execution for any undesirable outcomes. The courts have reinforced a limited interpretation of the Act, as well as tight deadlines for issuing revised standards. Executive branch career and policy officials respond by hiding policy judgments and creating a science charade, developing scientific-sounding explanations to justify one standard over

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officials, the media, and the public with 'spin' on the science… with results distilled to the 'sound bite.'" Bachmann 2007: 687.

[122] For example, EPA faces a judicial deadline to issue final ozone NAAQS by October 15, 2015. http://www.epa.gov/ttn/naaqs/standards/ozone/data/201404ozonenaaqsorder.pdf

[123] Fraas, Arthur. "Observations on OIRA's Policies and Procedures." *Administrative Law Review* Vol. 63, Special Edition: OIRA Thirtieth Anniversary Conference (2011), p. 86.

[124] Since the mid-1990s, the average interagency review time for NAAQS rules subject to deadlines was less than 20 days, compared to an average review time of more than 70 days for all EPA rules over the same period. Statistics can be derived from data available at www.RegInfo.gov.

another, and public interveners vigorously defend alternative standards based on their own interpretation of the "science."

Scientists argue for the primacy of their data, analysts have an incentive to downplay rather than reveal uncertainties regarding their predictions or the implications of key risk assessment policy choices, and decision makers point to science as either requiring a new standard or as determining that existing standards are adequate.

This has evolved into an adversarial process, characterized by harsh rhetoric in which each party claims the science supports its preferred policy outcome and questions opponents' credibility and motives, rather than a constructive discussion regarding appropriate data, assumptions and normative decisions. The real reasons for selecting a particular standard may not even be discussed. This harms the credibility of science advice and results in poorer decision making.

Recommendations

Despite the National Research Council's guidance over 30 years ago, controversy remains surrounding regulatory actions aimed at reducing risk, leading to accusations of "politicized science," "advocacy science," or "junk science." What the NRC in 1983 identified as "a blurring of the distinction between risk assessment policy and risk management policy"[125] is enabled by the is-ought fallacy and leads to hidden policy judgments and science charades that harm policy outcomes and can damage faith in science itself.

In thinking about reforms to improve how science is used in developing regulations, clarifying which aspects of the decision are matters of science and which are matters of policy is essential to avoid both hidden policy judgments and the science charade. When people condemn the "politicization" of science,[126] the problem may really be that we ask too much of science in addressing policy problems. The Clean Air Act succumbs to the is-ought fallacy and does not permit transparent consideration of relevant policy factors when developing regulations. Other statutes, particularly those dealing with health, safety and the environment, are vulnerable to the same problem. As the BPC recommended, a focus of reform should be on devising regulatory processes that, "in as many situations as possible, …help clarify for both officials and the general public which aspects of disputes are truly about scientific results and which concern policy."[127] This would not only help address the is-ought fallacy, but also the problem of hidden policy judgments, in which the effect of risk assessment policy judgments on estimates of outcomes are

[125] National Research Council and the Committee on the Institutional Means for Assessment of Risks to Public Health. *Risk Assessment in the* Federal *Government: Managing the Process.* 1983. Washington D.C.: National Academies Press, p. 3.

[126] Mooney, C. The Republican War on Science. New York: Basic Books; 2006.

[127] Bipartisan Policy Center, 2009:4.

not acknowledged. "This transparency would both help force values debates into the open and could limit spurious claims about, and attacks on, science."[128]

Numerous experts have offered specific recommendations for improving the conduct of regulatory science. The recommendations that follow attempt to alter the incentives of the parties to the rulemaking process; the first category would address behavior contributing to the is-ought fallacy, the second would specifically address the problem of hidden policy judgments, and the third would improve incentives generally.

Is-Ought Fallacy

The is-ought fallacy is the pretense that normative policy decisions regarding what "ought to be" can be determined exclusively by positive scientific information that describes what "is." This mistake can lead to both hidden policy judgments in risk assessments and a science charade in justifying policy decisions. The first two recommendations aim to reduce incentives to succumb to the is-ought fallacy.

1. Legislators must be more forthright in recognizing that "science" is a positive discipline that can inform, but not decide, appropriate policy.

It would be challenging to convince legislators to avoid the is-ought fallacy and resist delegating decisions to agencies on the pretense that science alone can make the normative determination of what policy ought to be. This includes asking science advisors to recommend policy judgments they are typically ill-suited to provide. For legislators to make the effort to elevate the debate above simple rhetoric, they must have different incentives and expectations of rewards than exist now. Currently, there is no feedback loop to reward a politician for tackling these issues openly and seriously.

Comparing the effectiveness of different statutes can be illuminating, however. Some statutes directed at health, safety and environmental risks have facilitated more rational regulatory policy than others by recognizing that risk management requires normative judgments that consider tradeoffs. For example, the Safe Drinking Water Act requires EPA to consider the costs as well as the benefits of requiring local water authorities to install controls for specific substances. Perhaps that is one reason why the debates over drinking water standards are generally less acrimonious than debates over ambient air quality standards. Since the statute allows explicit consideration of tradeoffs when setting standards, the full burden of decision-making is not vested in the risk assessment. As a result, policy makers and interested parties may have less incentive to embed policy preferences in the risk assessment portion of the analysis, because they can debate them openly and transparently in the risk management discussion. [129]

[128] Bipartisan Policy Center, 2009:5.
[129] Dudley & Gray, 2012.

Codifying current executive requirements for performing regulatory impact analyses, including benefit-cost analyses, could provide a "supermandate" that would require agencies to explicitly present uncertainties and tradeoffs and to justify decisions in a transparent manner.[130]

2. Legislators and policymakers must clarify the appropriate role for scientific advisors.

The engagement of scientific advisory panels can provide a necessary and valuable source of information and peer review for agency science, but greater efforts should be made to restrict their advice to matters of science, and not ask them to recommend regulatory policies. When asked to advise on policy choices, as is the case with CASAC, it is impossible for members not to be tempted to wrap their policy views in a lab coat and present them as scientific recommendations.[131]

As a former EPA scientist observed:

> Scientific information must remain a cornerstone of public policy decisions, but I offer cautionary guidance to scientists: get involved in policy deliberations, but play the appropriate role. Provide facts, probabilities, and analysis, but avoid normative science. Scientists have much to offer the public and decision-makers, but also have much to lose when they practice stealth policy advocacy.[132]

Cox observes:

> Experts, like other people, typically have high confidence in their own judgments, even when these lack objective validity.[133] But subjective confidence in subjective judgments should not be used in place of sound, objective scientific methods. To do so, as in EPA's risk assessment for ozone, replaces sound science with potentially arbitrary, biased, and mistaken judgments.[134]

Legislators should be clear, when establishing committees like CASAC, to limit the role of scientific advisory panels to advising on science. Executive branch policy officials should also be

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[130] Dudley, Susan E. "Improving Regulatory Accountability: Lessons from the Past and Prospects for the Future." Case Western Reserve Law Review. Vol 65. No. 1 (Summer 2015)

[131] See, for instance, the recommendation of former CASAC member Morton Lippman regarding changing the Clean Air Act. Lippman noted "CASAC's role must be limited to highlighting the issues at the science-policy interface and the scientific knowledge that informs these issues." Dr. Morton Lippman. "Comments on the NAAQS Review Process." 2006, at A-22. http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Vanessa%20Memo_03-6-06/$File/sabso-casac_memo_and_comments.pdf

[132] Lackey, 2013.

[133] Kahneman D. *Thinking Fast and Slow*. 2011. Farrar, Straus, and Giroux. New York, New York. (as cited in Cox 2014)

[134] Cox 2014.

very clear in drafting charge questions for advisory committees to solicit their scientific expertise without encouraging them to blur the lines between scientific expertise and policy judgment.[135] As both the BPC and Keystone reports emphasized, the questions posed to such panels "should be clearly articulated, and 'explicitly differentiate, to the extent possible, between questions that involve scientific judgments and questions that involve judgments about economics, ethics, and other matters of policy.'" [136] Experts with formal training and experience in policy analysis, economics, law, and other disciplines are much better equipped to provide advice on these latter questions.

Hidden Policy Judgments

Risk assessment necessarily involves assumptions and judgments as well as pure scientific inputs, yet they often generate precise-sounding predictions that hide not only considerable uncertainty about the actual risk, but hidden policy judgements. When scientists, intentionally or unintentionally, insert, but do not disclose, their own policy preferences in the scientific advice they provide government decision-makers, it harms the credibility of science advice and results in poorer policy decisions.

3. The executive branch must establish procedures and incentives to make more transparent the effect different credible risk assessment inputs and assumptions have on the range of plausible outcomes.

This proposal reiterates the recommendations of expert reports issued over the last three decades, including recent recommendations from the Institute of Medicine[137] and BPC. One way to make the risk assessment policy choices more transparent to decisionmakers and the public would be for agency scientists to calculate and present multiple risk estimates based on a variety of scientifically plausible data sets, endpoints, models, *etc.*[138] This would be in stark contrast to the current practice in which agencies embed multiple risk assessment policy choices in a single assessment, which facilitates what one former EPA scientist calls "stealth advocacy… because the average person reading or listening to such scientific statements is likely unaware of the

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[135] Several former CASAC officials encouraged EPA to be clearer in its charge questions to distinguish between science and policy. Environmental Protection Agency Clean Air Scientific Advisory Committee (CASAC). CASAC Input on EPA's revised NAAQS Review Process; 2006 March. Available at: http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/NewNAAQSProcess?OpenDocument

[136] The Keystone Center, 2012: 8. (Internal citation to BPC at 5.)

[137] See, for instance, recommendation 8.1 that "U.S. Environmental Protection Agency senior managers should be transparent in communicating the basis of its decisions, including the extent to which uncertainty may have influenced decisions." at Board on Population Health and Public Health Practice; Institute of Medicine. *Environmental Decisions in the Face of Uncertainty*, Committee on Decision Making Under Uncertainty, 2013, p. 225. Available at: http://www.nap.edu/catalog.php?record_id=12568

[138] Dudley & Gray 2012

underlying advocacy [and] … hidden policy preferences."[139] It is telling that currently, despite the fact the NAAQS level must "err on the side of safety," EPA currently cannot (or will not) produce a quantitative estimate of just how prudent NAAQS levels are compared to more likely estimates of health risks.

Once a range of plausible risk outcomes is identified based on different scientifically plausible inputs, agencies could transparently identify which set of inputs, models, and outcomes comported with its preferred risk assessment policy choice. Policy officials would choose specific numerical values from a range of scientifically plausible risk estimates and publicly defend the risk assessment policy choices that support that choice. This would provide a serious incentive for policy officials to look into estimates of risk, consult with a broad variety of experts to understand the range of scientific views and explicitly articulate the policy preferences informing their decisions.

Greater transparency regarding the assumptions and policy rationales for choosing one set of assumptions or models over another would encourage more openness and constructive discussion about science and policy, improving the ultimate policy decision and probably engendering greater acceptance of that policy choice.[140]

4. The executive branch should institutionalize reforms that encourage greater feedback and challenge of risk assessment practices and policy choices.

Greater transparency in the models, assumptions, and risk assessment policy choices could encourage more open, constructive debate on those choices.[141] The scientific method depends on falsifiable hypotheses, data gathering, replication, dissent, and challenge, to ensure objective analysis to minimize bias in the interpretation of results.

No one is truly objective. We all approach problems with our own prior views and perceptions, and, particularly when faced with new or incomplete information, we tend to look to others in whom we trust to help form our opinions and make decisions. Research suggests that individuals form more extreme views when surrounded by others with similar perspectives.[142] Institutional reforms that intentionally engage, rather than avoid, competing views, could go a long way to improve the clarity of the risk assessment process and the decisions that depend on scientific input.

President Obama built on his predecessors' efforts to provide for interagency review of different aspects of regulatory decisions, including the underlying science. He directed agencies to

[139] Lackey, 2013.
[140] Dudley & Gray, 2012.
[141] Open Data Initiative https://www.whitehouse.gov/open
[142] Sunstein, 2009.

encourage an "open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, …including relevant scientific and technical findings."[143]

Successful reforms might involve pre-rulemaking disclosure of risk assessment information, to engage broad public comment on the proper choice of studies, models, assumptions, etc. long before any policy decisions are framed, and "positions" established. Advanced notices of proposed rulemaking could be used effectively to gather such input.[144]

5. Scientific advisory panels should be required to represent a diversity of perspectives, disciplines, expertise, and experience.

The 2012 Keystone Center report offers a series of recommendations on "the composition of committees that are empaneled to review the science behind a regulatory decision."[145] Acknowledging the importance of choosing panelists that "have the knowledge, training, and experience needed to address the charge to the panel,"[146] it admonished agencies "to recognize that all potential panelists will have conscious and unconscious biases," and said that "the panel selection process requires review of the disclosed information and a judgment as to the ability of each prospective panelist to participate in open discussion and to consider other perspectives."[147]

The report goes on to recommend:

> Because biases exist, an agency should strive to engage a wide range of perspectives of qualified scientific experts. We endorse the BPC report's statement that, "Agencies should not shy away from including scientists on a panel who are considered 'outliers' on the question(s) under consideration, provided that the scientist is a respected practitioner in a relevant field and the committee as a whole fairly represents the mainstream."[148]

Former CASAC Chair George Wolff's observations, quoted above, that the lack of balance among the individuals EPA empaneled to review the PM standards published in 2006

[143] Obama, Barrack. Executive Order 13563. "Improving Regulation and Regulatory Review." 76 FR 3822 January 18, 2011.

[144] Balla, Steven J. and Dudley, Susan E. "Stakeholder Participation and Regulatory Policymaking in the United States." A report prepared for the *Organisation for Economic Co-operation and Development.* 2014. http://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/Balla-Dudley-US-Stakeholder-Reg-Process-11-2014.pdf

[145] Keystone, 2012:4.

[146] Keystone, 2012:14

[147] Keystone, 2012:15

[148] Keystone, 2012: (quoting BPC at 24)

"predetermined the outcome of the review" [149] illustrates the effects on policy of not engaging a range of perspectives.

Improving incentives for feedback, learning and experimentation

The scientific method involves forming a hypotheses, making predictions based on that hypothesis, and data gathering and empirical testing, followed by revisions to the hypothesis and predictions based on results. It represents a systems approach whereby feedback and challenge inform action and encourage learning. The recommendations that follow would improve incentives for feedback, learning and experimentation.

6. The legislative and executive branches should institutionalize feedback through retrospective review of regulatory outcomes.

Regulatory programs are rarely subjected to rigorous evaluation and feedback. Most regulatory analyses rely on models and assumptions to make predictions about the risk reduction benefits that will accrue from a specific intervention. Institutionalizing a requirement to evaluate whether the predicted effects of the regulation were realized would provide an incentive to improve the use of science for predicting the benefits of interventions.

President Obama's executive orders directing agencies to review their regulations "to determine whether [they] should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives"[150] could facilitate better retrospective analysis. However, these and previous retrospective review guidelines have met with limited success, largely because they did not change underlying incentives.[151] For example, Section 812 of the Clean Air Act Amendments of 1990 requires EPA periodically to assess the benefits and costs of the Act,[152] but EPA's assessment under this provision has relied on the same modeling it used for ex ante analysis, so it has not provided information necessary to validate estimates or underlying risk assessment assumptions and procedures.

A useful evaluation would measure population changes with respect to the predicted outcomes following the regulatory intervention. For example, actual reductions in cancer rates would be

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[149] Wolff, 2006.

[150] Executive Order 12866 (1993) and Executive Order 13563 (2011).

[151] Dudley, Susan E. *Testimony before the Joint Economic Committee: Reducing Unnecessary and Costly Red Tape through Smarter Regulations*, June 26, 2013, http://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/2013_06_26_Dudley_JEC_statement.pdf

[152] EPA Office of Air and Radiation. The Benefits and Costs of the Clean Air Act from 1990-2012: Summary Report. Environmental Protection Agency; 2011 March. Available at: http://www.epa.gov/oar/sect812/feb11/summaryreport.pdf

compared to predicted reductions to determine if actual experience corroborates or challenges the hypothetical benefits. Cox offers concrete recommendations for applying statistical tools to test "how changes in inputs (such as exposure) propagate through a network of validated causal mechanisms to cause resulting changes in outputs (such as health effects)."[153]

Agencies should be required to include in proposed regulations a framework for empirical testing of assumptions and hypothesized outcomes. To incentivize more robust evaluation along the lines identified above, agencies could be required to test the validity of risk-reduction predictions before commencing new regulation that relies on models. The five-year NAAQS reviews, for example, could be required to apply quasi-experimental (QE) techniques to gather and analyze epidemiology data and health outcome trends in different regions of the country and compare them against predictions.[154]

Congress and OMB should reallocate resources from ex ante analysis to allow agencies to gather the information and evaluation tools necessary to validate ex ante predications. Shifting resources from ex ante analysis to ex post review would not only help with evaluation, but would improve our ex ante hypotheses of regulatory effects. Whether President Trump's requirement[155] that agencies identify existing regulations to remove or modify before issuing new ones will lead to a shift in resources and motivate better retrospective analysis remains to be seen.

Retrospective review should not be left exclusively to regulatory agencies, which have little incentive to find fault with their regulations, but should be subject to third-party evaluation.[156] And, mechanisms such as sunset provisions, or offsets (as applied in other countries) could provide incentives for objective evaluation of regulations' effects.[157]

7. Regulations should be designed to facilitate natural experimentation and learning.

Designing regulations from the outset in ways that allow variation in compliance is essential if we are to go beyond observing mere associations and gather data necessary to test hypotheses of the relationship between regulatory actions, hazards, and risks. Quasi-experiments (QE), relying

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[153] Cox, 2015.

[154] Cox 2015, and Domenici, Greenstone & Sunstein, 2014

[155] Executive Order 13771 (2017).

[156] As Greenstone observed, "the process of self-evaluation is challenging for all organizations, as it requires complete objectivity. Indeed, history is unkind to organizations that fail to get outside reviews of their work." Statement of Michael Greenstone, Milton Friedman Professor of Economics, University of Chicago, Director, Energy Policy Institute at Chicago, before theUnited States Senate Subcommittee on Regulatory Affairs and Federal Management Roundtable on "Examining Practical Solutions to Improve the Federal Regulatory Process." June 4, 2015

[157] Dudley, Susan E. "Can Fiscal Budget Concepts Improve Regulation?" *NYU J. Legislation & Public Policy.* Vol. 19:259 (2016).

on differences in treatments (such as differences in attainment status with NAAQS) can inform risk assessments going forward.

> QE evaluation techniques provide an opportunity to improve understanding of the relation between human health and particulates air pollution. In a QE evaluation, the researcher compares outcomes between a treatment group and a control group, just as in a classical experiment; but treatment status is determined by politics, an accident, a regulatory action, or some other action beyond the researcher's control. The key difference with an observational study in this setting is that the QE approach is devoted to identifying treatment-induced variation in particulates that plausibly mitigates confounding or omitted variables bias in the estimated relation between human health and particulates, rather than relying on the variation presented by nature and optimizing agents. Despite the "nonrandom" assignment of treatment status, it is possible to draw causal inferences from the differences in outcomes (by "outcomes," we refer to both air pollution levels and human health) between the treatment and control groups in a quasi- or natural experiment, provided certain assumptions are met.[158]

Agencies could conduct pilot studies or "deploy different regulations where empirical evaluations of such differences will help resolve disputed issues of regulatory policy."[159]

8. Greater weight should be placed on scientific studies that were subject to peer review and whose results are reproducible.

Peer review is often considered a fundamental component of the scientific process. Concerns over the extent and rigor of review of important scientific analyses led OMB in 2004 to issue a memorandum establishing guidelines for the use of external peer-review at all federal agencies and departments.[160] OMB has also directed agencies to issue information quality guidelines to, among other things, ensure the objectivity of information, including "a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties."[161] These guidelines did not require reproducibility, however, observing that "reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination."

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[158] Domenici, Greenstone & Sunstein. 2014:258

[159] John O. McGinnis. *Accelerating Democracy: Transforming Governance through Technology.* Princeton University Press. 2012:311.

[160] U.S. Office of Management and Budget. 2004. *Information Quality Bulletin for Peer Review.* http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf

[161] U.S. Office of Management and Budget. 2002. "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies." 67 FR 8452

Scientific publishing is focusing more on the sharing of data and experimental transparency.[162] The journal *Science, for example, has undertaken* "initiatives to increase transparency and promote reproducibility in the published research literature... Connected to that progress, and an essential element to its success, an additional focus will be on making data more open, easier to access, more discoverable, and more thoroughly documented."[163]

As the *Science* editors observe, "When the greatest number of creative and insightful minds can find, access, and understand the essential features that led to the collection of a data set, the data reach their highest potential."[164] A greater emphasis on reproducibility can encourage challenge and validation so important to the scientific method.

9. Legislation should recognize that states have a core interest in environmental quality, and that experimentation and competition among states can be a powerful force for improving environmental outcomes and our practical knowledge of what works.

Many environmental statutes are structured, appropriately, with a prominent federalist framework. Much of the on-the-ground work is left to states, which makes sense because pollution is primarily a problem of local externalities, and also because local knowledge and local experimentation can be brought to bear on problems that are not susceptible to one-size-fits-all federal rules. As implemented, however, the NAAQS process assigns to EPA staff an artificial scientific determination, isolated from any practical considerations, and assigns to the states all of the problems of implementation, while depriving them of the policy discretion that might allow them to solve those problems. The resulting dynamic channels competitive energy into unproductive directions.

Perhaps a better division of responsibility would be for the federal government to conduct basic risk assessment research and share information on environmental damages, but defer to states or regional associations on decisions regarding the risk management policies appropriate for their situations. This would offer several advantages. First, it would help distinguish risk assessment from risk management, especially if combined with other recommendations aimed at avoiding the is-ought fallacy. Second, it would encourage risk management decisions to be made where they can best reflect the circumstances and preferences of affected citizens.[165] Third, the nation as a whole would gain from experimentation regarding how different policy measures work in practice, without imposing untried systems on the entire nation.[166] Such an approach would provide the natural experimental framework and data needed for more QE evaluation.

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[162] Joel Achenbach, "The new scientific revolution: Reproducibility at last." Washington Post. January 27, 2015.

[163] *Science* 2 January 2015: Vol. 347 no. 6217 p. 7

[164] *Science, January 2015.*

[165] For pollutants that cross state borders, regional governance structures may be appropriate.

[166] Where there are large national economies of scope, such as the development of vehicle emission standards, the risk management could be done at the national level. Absent such economies, greater discretion on risk

10. Agencies should engage in collaborative tools to generate knowledge.

Nobel laureate Fredrich von Hayek identified the central problem facing public policy as "the unavoidable imperfection of man's knowledge and the consequent need for a process by which knowledge is constantly communicated and acquired."[167] Hayek's focus was on economic planning and he showed that decentralized markets focus dispersed information—information that no one individual can obtain—and convey it efficiently to market participants. Many of the risks of concern to regulatory agencies may not be accounted for in market transactions, however. In these cases, we may require a different solution to address Hayek's observation that relevant facts are never possessed by a single mind, to take advantage of knowledge "that is dispersed among many people."

New media may provide a vehicle for stimulating a broader exchange of ideas and expanding our knowledge by reducing transaction costs, significantly lowering the costs of gathering and aggregating information, and removing obstacles to collaboration across a wide spectrum of individuals.[168] E-rulemaking provides a platform for following and commenting on federal regulations, but to date, it has mainly served to facilitate traditional notice and comment, and not generated interactive, iterative engagement.[169,170]

To harness the wisdom of dispersed knowledge, agencies or outside parties might experiment with a collaborative "wiki" approach to public comment, where, rather than each individual or group filing comments in parallel and the agency responding to those comments individually, it could provide a forum for diverse individuals to build on each other's information, adding, editing, updating, and correcting to engage the wisdom of dispersed knowledge on issues where no one person has complete information.[171] Larry Sanger, founder of Wikipedia, calls this "distributed knowledge collaboration."[172]

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management should remain with the states. Wallace E. Oates suggests that "the introduction in the 1970s and 1980s of a variety of emissions trading systems at the state level demonstrated the feasibility of such systems and some of their very appealing properties—as well as certain pitfalls." He suggests that this state-level experimentation with innovative solutions to emissions problems led to the successful introduction of the national system of tradable sulfur allowances under the 1990 Clean Air Act Amendments. Oates, W.E. Environmental Federalism. Resources for the Future (RFF); 2009. Available at: http://www.rff.org/Publications/WPC/Pages/Environmental-Federalism-Wallace-E-Oates.aspx

[167] Hayek F.A. 1945. "The use of knowledge in society." *American Economic Review* 35, No. 4: 519-530.

[168] Shirky, Clay. *Here Comes Everybody: The Power of Organizing Without Organizations.* New York: Penguin Press. 2008.

[169] Dudley & Gray, 2012.

[170] Balla & Dudley, 2014.

[171] Dudley & Gray, 2012.

[172] Sanger, Larry "Toward a New Compendium of Knowledge." 2006. http://www.citizendium.org/essay.html

One big advantage of a wiki approach is what Shirky calls its "publish-then-filter" model, where editing is done after something is posted, rather than before. Participants don't need to worry that their post is incomplete or may have inaccuracies because other participants can expand or correct it.

> In a system where anyone is free to get something started, however badly, a short, uninformative article can be the anchor for the good article that will eventually appear. Its very inadequacy motivates people to improve it; many more people are willing to make a bad article better than are willing to start a good article from scratch.[173]

Engaging public input through a wiki is an intriguing possibility that holds the potential to revolutionize how agencies gather information on which to base public policies.

Conclusions

Institutional arrangements in the regulatory development process tend to aggravate two contributors to the politicization of science: "hidden policy judgments" (not acknowledging the policy judgments inherent in risk assessment) and "science charades" (camouflaging policy decisions as science). Both of these problems threaten the credibility of the scientific process and harm regulatory policy. Many of those involved in regulatory decisions have incentives to hide policy preferences, such as how to deal with the uncertainty in assessments of risk, and to dismiss and denigrate dissenting views. In many cases, politicization is the result of officials falling prey to the "is-ought fallacy" (incorrectly mixing up positive information about what "is" with normative advice about what "ought to be"). Key policy choices, disguised as science, too often rest with technical staff; meanwhile, policy makers charged with making hard policy decisions are able to avoid responsibility by claiming that their hands were tied by "the science."

As a case study, this paper has examined the process by which EPA sets NAAQS under the Clean Air Act to illustrate some of the perverse incentives involved in developing regulations, and offered ten mechanisms to improve those incentives and resulting policy.

Effective environmental policy that focuses resources on addressing real threats to public health and the environment depends on reliable scientific information and transparent policy choices. The mechanisms offered here could reduce acrimony and improve the debate over environmental policy by helping distinguish between risk assessment and risk management, avoid the is-ought fallacy, and make more transparent previously hidden policy judgments. This will improve not only environmental outcomes, but the integrity of science advice.

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[173] Shirkey, 2008:122.

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Corrales, Mark[Corrales.Mark@epa.gov]; Curry, Bridgid[Curry.Bridgid@epa.gov]; Wiggins, Lanelle[Wiggins.Lanelle@epa.gov]; Schillo, Bruce[Schillo.Bruce@epa.gov]
From: Nickerson, William
Sent: Fri 9/7/2018 9:24:43 PM
Subject: FAR package for MATS
MATS_FAR_FR Notice_RTR-A&N Proposal_9.7.18.docx
MATS_FAR_Risk Assessment Report_with appendices_9.7.18.pdf
MATS_FAR_Risk Report_Appendix 1_Attachments_9.7.18.xlsx
MATS_CoalBit_MACT_HClSO2_Memo_9.7.18.docx
Attach_B_CoalBit_9.7.18.xlsx
Attach_A_CoalBit_9.7.18.xlsx

Brittany,

The FAR package was circulated today and is complete. The staff level FAR meeting is scheduled for September 17 at 3:00 (ORD requested additional time, but the meeting is still on the 17th).

The FAR package contains: (1) the preamble, (2) the risk assessment and supporting documents (there is no technology review document, it is discussed directly in the preamble), and, (3) a memo regarding the MACT floor analysis for the subcategorization of existing eastern bituminous coal refuse-fired EGUs and supporting analysis.

Deliberative Process / Ex. 5

Let me know if you would like any additional information.

FR Notice/Preamble:

Risk Assessment:

Memo re MACT floor analysis for existing eastern bituminous coal refuse-fired EGUs:

To: Bolen, Brittany[bolen.brittany@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; McGartland, Al[McGartland.Al@epa.gov]
From: Kopits, Elizabeth
Sent: Tue 10/17/2017 1:41:48 PM
Subject: FW: Summary of Interagency Comments under EO12866 for EPA Draft Notice of Data Availabilities -- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Three-Month Stay (RIN 2060-AT59)
EO12866_Oil and Gas 3-Month Stay NODA 2060-AT65 Preamble_20171017_Clean.docx
EO12866_Oil and Gas 3-Month Stay NODA 2060-AT65 Preamble_20171017_RLSO.docx
EO12866_Oil and Gas Stay NODA 2060-AT59 Economics Memo_20171017_Clean.docx
EO12866_Oil and Gas Stay NODA 2060-AT59 Economics Memo_20171017_RLSO.docx
EO12866_Oil and Gas Stay NODA 2060-AT59 Preamble_20171017_Clean.docx
EO12866_Oil and Gas Stay NODA 2060-AT59 Preamble_20171017_RLSO.docx
Response to Summary of Interagency Comments Under EO12866_EPA Oil and Natural Gas NO....docx

Per my previous email, here is what was sent back to OMB this morning.

Thanks,
Elizabeth

From: Miller, Elizabeth
Sent: Tuesday, October 17, 2017 9:17 AM
To: Kopits, Elizabeth <Kopits.Elizabeth@epa.gov>
Subject: FW: Summary of Interagency Comments under EO12866 for EPA Draft Notice of Data Availabilities -- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Three-Month Stay (RIN 2060-AT59)

From: Thompson, Lisa
Sent: Tuesday, October 17, 2017 8:36 AM
To: Szabo, Aaron L. EOP/OMB <EOP / Ex. 6>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Gilbreath, Jan <Gilbreath.Jan@epa.gov>
Cc: Laity, Jim A. EOP/OMB <EOP / Ex. 6>; DeBruhl, Brandon F. EOP/OMB <EOP / Ex. 6>; Rojas, Pablo EOP/OMB (Intern) <EOP / Ex. 6>; Ruggiero, Justin M. EOP/OMB (Intern) <EOP / Ex. 6> Eck, Janet <Eck.Janet@epa.gov>; Miller, Elizabeth <Miller.Elizabeth@epa.gov>; Hambrick, Amy <Hambrick.Amy@epa.gov>; Branning, Amy <Branning.Amy@epa.gov>
Subject: RE: Summary of Interagency Comments under EO12866 for EPA Draft Notice of Data Availabilities -- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Three-Month Stay (RIN 2060-AT59)

Hi Aaron,

Please find attached EPA's responses to the interagency comments from 10/9/2017. There are 7 attachments.

1. EPA responses to interagency comments
2. Updated preamble - RIN 2060-AT59 (clean and RLSO)
3. Updated preamble - RIN 2060-AT65 (clean and RLSO)
4. Updated economics memo – RIN 2060-AT59 (clean and RLSO)

Thanks,
Lisa

From: Szabo, Aaron L. EOP/OMB [mailto:EOP / Ex. 6]
Sent: Monday, October 9, 2017 5:37 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>; Thompson, Lisa <Thompson.Lisa@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Gilbreath, Jan <Gilbreath.Jan@epa.gov>
Cc: Szabo, Aaron L. EOP/OMB <EOP / Ex. 6>; Laity, Jim A. EOP/OMB <EOP / Ex. 6>; DeBruhl, Brandon F. EOP/OMB <EOP / Ex. 6>; Rojas, Pablo EOP/OMB (Intern) <EOP / Ex. 6>;

Ruggiero, Justin M. EOP/OMB (Intern) <EOP / Ex. 6>
Subject: Summary of Interagency Comments under EO12866 for EPA Draft Notice of Data Availabilities -- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Three-Month Stay (RIN 2060-AT59)

Attached please find the summary of interagency comments under EO 12866 for the EPA draft notice of data availabilities entitled, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements" and Three-Month Stay (RIN 2060-AT59 and RIN 2060-AT65) and related economics memorandum.

Please let me know if you have any questions.

Aaron L. Szabo
Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
EOP / Ex. 6